FRANCISCVS BACON BARO DE VERVLAM S^TI ALBVI
SEV NOTIORIBVS TITVLIS
SCIENTIARVM LVMEN FACVNDIÆ LEX
SIC SEDEBAT
QVI POSTQVAM OMNIA NATVRALIS SAPIENTIÆ
ET CIVILIS ARCANA EVOLVISSET
NATVRÆ DECRETVM EXPLEVIT
COMPOSITA SOLVANTVR
AN° DNI M.D.C.XXVI.
ÆTAT^S LXVI.
TANTI VIRI
MEM.
THOMAS MEAVTYS
SVPERSTITIS CVLTOR
DEFVNCTI ADMIRATOR
H. P.

THE

WORKS

OF

FRANCIS BACON,

Baron of *VERULAM*,

VISCOUNT *St. Alban*,

AND

Lord High Chancellor of *England*.

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A

PROPOSITION

TO HIS

MAJESTY,

BY

Sir *FRANCIS BACON*, Knight,

His MAJESTY'S Attorney-General, and one of his Privy-Council; touching the Compiling and Amendment of the Laws of ENGLAND.

YOUR MAJESTY,

OF your favour, having made me Privy-Counſellor, and continuing me in the place of your Attorney-General, (which is more than was theſe hundred years before,) I do not underſtand it to be, that by putting off the dealing in cauſes between party and party, I ſhould keep holy-day the more; but that I ſhould dedicate my time to your ſervice with leſs diſtraction. Wherefore, in this plentiful acceſſion of time, which I have now gained, I take it to be my duty, not only to ſpeed your commandments, and the buſineſs of my place; but to meditate and to excogitate, of my ſelf, wherein I may beſt, by my travels, derive your virtues to the good of your people, and return their thanks and increaſe of love to you again. And after I had thought of many things, I could find, in my judgment, none more proper for your Majeſty as a maſter, nor for me as a workman, than the reducing and recompiling of the laws of *England*.

YOUR Majeſty is a King, bleſſed with poſterity; and theſe Kings ſort beſt with acts of perpetuity, when they do not leave them, inſtead of children; but tranſmit both line and merit to future generations. You are a great maſter in juſtice and judicature, and it were pity that the fruit of that virtue ſhould die with you. Your Majeſty alſo reigneth in learned times; the more, in regard of your own perfections and patronage of learning; and it hath been the miſhap of works of this nature, that the leſs learned time hath wrought upon the more learned, which now will not be ſo. As for my ſelf, the law is my profeſſion, to which I am a debtor. Some little helps I may have of other learning, which may give form to matter; and your Majeſty hath ſet me in an eminent place, whereby in a work which muſt be the work of many, I may the better have coadjutors. Therefore, not to hold your Majeſty with any long preface, in that which I conceive to be nothing leſs than words, I will proceed to the matter; which matter it ſelf nevertheleſs requireth ſomewhat briefly to be ſaid, both of the digni-

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ty, and likewiſe of the ſafety, and convenience of this work: and then to go to the main; that is to ſay, to ſhew how the work is to be done: which incidently alſo will beſt demonſtrate, that it is no vaſt nor ſpeculative thing, but real and feaſible. *Calliſthenes*, that followed *Alexander*'s court, and was grown in ſome diſpleaſure with him, becauſe he could not well brook the *Perſian* adoration; at a ſupper (which with the *Grecians* was ever a great part talk,) was deſired, becauſe he was an eloquent man, to ſpeak of ſome theme, which he did; and choſe for his theme, the praiſe of the *Macedonian* nation; which though it were but a filling thing to praiſe men to their faces, yet he did it with ſuch advantage of truth, and avoidance of flattery, and with ſuch life, as the hearers were ſo raviſh'd with it, that they plucked the roſes off from their garlands, and threw them upon him; as the manner of applauſes then was: *Alexander* was not pleaſed with it, and by way of diſcountenance ſaid, It was eaſy to be a good orator, in a pleaſing theme. But (ſaith he to *Calliſthenes*,) turn your ſtyle, and tell us now of our faults, that we may have the profit, and not you only the praiſe: which he preſently did with ſuch a force, and ſo piquantly, that *Alexander* ſaid, The goodneſs of his theme had made him eloquent before; but now it was the malice of his heart, that had inſpired him.

1. SIR, I ſhall not fall into either of thoſe two extremes, concerning the laws of *England*; they commend themſelves beſt to them that underſtand them; and your Majeſty's chief Juſtice of your bench hath in his writings magnified them not without cauſe: certainly they are wiſe, they are juſt, and moderate laws; they give to God, they give to *Caeſar*, they give to the ſubjects, that which appertaineth. It is true, they are as mixt as our language, compounded of *Britiſh*, *Roman*, *Saxon*, *Daniſh*, *Norman* cuſtoms. And as our language is ſo much the richer, ſo the laws are the more compleat: neither does this attribute leſs to them, than thoſe that would have them to have ſtood out the ſame in all mutations; for no tree is ſo good firſt ſet, as by tranſplanting.

2. As for the ſecond extreme, I have nothing to do with it, by way of taxing the laws. I ſpeak only by way of perfecting them, which is eaſieſt in the beſt things; for that which is far amiſs, hardly receiveth amendment; but that which hath already, to that more may be given. Beſides, what I ſhall propound is not to the matter of the laws, but to the manner of their regiſtry, expreſſion, and tradition: ſo that it giveth them rather light than any new nature. This being ſo, for the dignity of the work I know ſcarcely where to find the like: for ſurely that ſcale, and thoſe degrees of ſovereign honour, are true and rightly marſhalled. Firſt, the founders of ſtates; then the law-givers; then the deliverers and ſaviours after long calamities; then the fathers of their countries, which are juſt and prudent princes; and laſtly, conquerors, which honour is not to be received amongſt the reſt, except it be, where there is an addition of more country and territory to a better government, than that was of the conquered. Of theſe, in my judgment, your Majeſty may with more truth than flattery be intitled to the firſt, becauſe of your uniting of *Britain* and planting *Ireland*; both which ſavour of the founder. That which I now propound to you, may adopt you alſo into the ſecond: law-givers have been called *principes perpetui*; becauſe, as Biſhop *Gardiner* ſaid in a bad ſenſe, that he would be biſhop an hundred years after his death, in reſpect of the long leaſes he made: ſo law-givers are ſtill Kings and Rulers after their deceaſe, in their laws. But this work, ſhining ſo in it ſelf, needs no taper. For the ſafety and convenience thereof,

thereof, it is good to conſider, and to anſwer thoſe objections or ſcruples which may ariſe, or be made againſt this work.

Obj. 1. That it is a thing needleſs; and that the law, as it now is, is in good eſtate, comparable to any foreign law; and that it is not poſſible for the wit of man, in reſpect of the frailty thereof, to provide againſt the incertainties and evaſions, or omiſſions of law.

Reſp. For the compariſon with foreign laws, it is in vain to ſpeak of it; for men will never agree about it. Our lawyers will maintain for our municipal laws; civilians, ſcholars, travellers, will be of the other opinion.

But certain it is, that our laws, as they now ſtand, are ſubject to great incertainties, and variety of opinion, delays and evaſions: whereof enſueth,

1. That the multiplicity and length of ſuits is great.

2. That the contentious perſon is armed, and the honeſt ſubject wearied and oppreſſed.

3. That the judge is more abſolute; who, in doubtful caſes, hath a greater ſtroke and liberty.

4. That the chancery courts are more filled, the remedy of law being often obſcure and doubtful.

5. That the ignorant lawyer ſhroudeth his ignorance of law, in that, doubts are ſo frequent and many.

6. That mens aſſurances of their lands and eſtates by patents, deeds, wills, are often ſubject to queſtion, and hollow; and many the like inconveniencies.

It is a good rule and direction (for that all *laws, ſecundum magis & minus*, do participate of incertainties,) that followeth. Mark, whether the doubts that ariſe are only in caſes not of ordinary experience, or, which happen every day: If in the firſt only, impute it to the frailty of man's foreſight, that cannot reach by law to all caſes; but if in the latter, be aſſured there is a fault in the law. Of this I ſay no more, but that (to give every man his due) had it not been for Sir *Edward Coke's* Reports, (which, though they may have errors, and ſome peremptory and extrajudicial reſolutions, more than are warranted; yet they contain infinite good deciſions, and rulings over of caſes,) the law by this time had been almoſt like a ſhip without ballaſt; for that the caſes of modern experience, are fled from thoſe that are adjudged and ruled in former time. But the neceſſity of this work is yet greater in the ſtatute law. For firſt, there are a number of enſnaring penal laws, which lie upon the ſubject; and if in bad times they ſhould be awaked, and put in execution, would grind them to powder.

There is a learned civilian that expoundeth the curſe of the prophet; *Pluet ſuper eos laqueos*, of a multitude of penal laws; which are worſe than ſhowers of hail or tempeſt upon cattle, for they fall upon men.

There are ſome penal laws fit to be retained, but their penalty too great; and it is ever a rule, that any over-great penalty, (beſides the acerbity of it) deads the execution of the law.

There is a further inconvenience of penal laws, obſolete, and out of uſe; for that it brings a gangrene, neglect, and habit of diſobedience upon other wholeſome laws, that are fit to be continued in practice and execution; ſo that our laws endure the torment of *Mezentius:*

The living die in the arms of the dead.

Lastly, There is ſuch an accumulation of ſtatutes concerning one matter, and they ſo croſs and intricate, as the certainty of law is loſt in the heap;

heap; as your Majeſty had experience laſt day upon the point, Whether the incendiary of *Newmarket* ſhould have the benefit of his clergy.

Obj. 2. THAT it is a great innovation; and innovations are dangerous beyond foreſight.

Reſp. ALL purgings and medicines, either in the civil or natural body, are innovations: ſo as that argument is a common place againſt all noble reformations. But the truth is, that this work ought not to be termed or held for any innovation in the ſuſpected ſenſe. For thoſe are the innovations which are quarrelled and ſpoken againſt, that concern the conſciences, eſtates, and fortunes of particular perſons: but this of general ordinance pricketh not particulars, but paſſeth *ſine ſtrepitu*. Beſides, it is on the favourable part; for it eaſeth, it preſſeth not: and laſtly, it is rather matter of order and explanation, than of alteration. Neither is this without precedent in former governments.

THE *Romans*, by their *Decemviri*, did make their twelve tables; but that was indeed a new enacting or conſtituting of laws, not a regiſtring or recompiling; and they were made out of the laws of the *Grecians*, not out of their own cuſtoms.

IN *Athens* they had *Sexviri*, which were ſtanding commiſſioners to watch and diſcern what laws waxed unproper for the time; and what new law did, in any branch, croſs a former law, and ſo, *ex officio*, propounded their repeals.

KING *Lewis* XI, of *France*, had it in his intention to have made one perfect and uniform law, out of the civil law *Roman*, and the provincial cuſtoms of *France*.

JUSTINIAN the Emperor, by commiſſions directed to divers perſons learned in the laws, reduced the *Roman* laws from vaſtneſs of volume, and a labyrinth of incertainties, unto that courſe of the civil law which is now in uſe. I find here at home of late years, that King *Henry* VIII, in the twenty ſeventh of his reign, was authorized by parliament to nominate thirty two commiſſioners, part eccleſiaſtical, part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the realm; and the ſame was revived in the fourth year of *Edward* VI, though neither took effect.

FOR the laws of *Lycurgus*, *Solon*, *Minos*, and others of ancient time, they are not the worſe, becauſe grammar ſcholars ſpeak of them: But things too ancient wax children with us again.

EDGAR, the *Saxon* King, collected the laws of this kingdom, and gave them the ſtrength of a faggot bound, which formerly were diſperſed.

THE ſtatutes of King *Edward* the firſt were fundamental. But, I doubt, I err, in producing ſo many examples: for, as *Cicero* ſaith to *Caeſar*, ſo may I ſay to your Majeſty;

Nil vulgare te dignum videri poſſit.

Obj. 3. IN this purging of the courſe of the common laws and ſtatutes, much good may be taken away.

Reſp. IN all purging, ſome good humours may paſs away; but that is largely recompenſed, by lightening the body of much bad.

Obj. 4. LABOUR were better beſtowed, in bringing the common laws of *England* to a text law, as the ſtatutes are, and ſetting both of them down in method and by titles.

Reſp. It is too long a buſineſs to debate, whether *lex ſcripta, aut non ſcripta*, a text law, or cuſtoms well regiſtred, with received and approved grounds and maxims, and acts and reſolutions judicial from time to time duly entered and reported, be the better form of declaring and authorizing laws. It was the principal reaſon or oracle of *Lycurgus*, that none of his laws ſhould be written. Cuſtoms are laws written in living tables, and ſome traditions the church doth not diſauthorize. In all ſciences they are the ſoundeſt, that keep cloſe to particulars; and ſure I am, there are more doubts that riſe upon our ſtatutes, which are a text law, than upon the common law, which is no text law. But, howſoever that queſtion be determined, I dare not adviſe to caſt the law into a new mould. The work which I propound tendeth to pruning and grafting the law, and not to plowing up and planting it again; for ſuch a remove I ſhould hold indeed for a perilous innovation.

Obj. 5. It will turn the judges, counſellors of law, and ſtudents of law to ſchool again, and make them to ſeek what they ſhall hold and adviſe for law; and it will impoſe a new charge upon all lawyers to furniſh themſelves with new books of law.

Reſp. For the former of thoſe, touching the new labour, it is true it would follow, if the law were new moulded into a text law; for then men muſt be new to begin, and that is one of the reaſons for which I diſallow that courſe.

But in the way that I ſhall now propound, the entire body and ſubſtance of law ſhall remain, only diſcharged of idle and unprofitable or hurtful matter; and illuſtrated by order and other helps, towards the better underſtanding of it, and judgment thereupon.

For the later, touching the new charge, it is not worth the ſpeaking of, in a matter of ſo high importance; it might have been uſed of the new tranſlation of the bible, and ſuch like works. Books muſt follow ſciences, and not ſciences books.

The Work it ſelf; and the way to reduce and recompile the Laws *of* England.

THIS work is to be done (to uſe ſome few words which is the language of action and effect) in this manner.

It conſiſteth of two parts; the digeſt or recompiling of the common laws, and that of the ſtatutes.

In the firſt of theſe, three things are to be done.

1. The compiling of a book, *de antiquitatibus juris.*

2. The reducing or perfecting of the courſe or corps of the common laws.

3. The compoſing of certain introductive and auxiliary books touching the ſtudy of the laws.

For the firſt of theſe, all ancient records in your *Tower*, or elſewhere, containing acts of parliament, letters patents, commiſſions, and judgments, and the like, are to be ſearched, peruſed, and weighed: And out of theſe are to be ſelected thoſe that are of moſt worth and weight, and in order of time not of titles, (for the more conformity with the year-books,) to be ſet down and regiſtred, rarely in *haec verba*; but ſummed with judgment, not omit-

ting any material part; theſe are to be uſed for reverend precedents, but not for binding authorities.

For the ſecond, which is the main, there is to be made a perfect courſe of the law *in ſerie temporis*, or year-books, (as we call them) from *Edward* the firſt to this day: in the compiling of this courſe of law, or year-books, the points following are to be obſerved.

First, All caſes which are at this day clearly no law, but conſtantly ruled to the contrary, are to be left out; they do but fill the volumes, and ſeaſon the wits of ſtudents in a contrary ſenſe of law. And ſo likewiſe all caſes, wherein that is ſolemnly and long debated, whereof there is now no queſtion at all, are to be entered as judgments only, and reſolutions, but without the arguments, which are now become but frivolous: yet for the obſervation of the deeper ſort of lawyers, that they may ſee how the law hath altered, out of which they may pick ſometimes good uſe, I do adviſe, that upon the firſt in time of thoſe obſolete caſes, there were a *memorandum* ſet, that at that time the law was thus taken, until ſuch a time, *&c.*

Secondly, *Homonymiae*, (as *Juſtinian* calleth them) that is, caſes merely of iteration and repetition, are to be purged away; and the caſes of identity, which are beſt reported and argued, to be retained inſtead of the reſt; the judgments nevertheleſs to be ſet down, every one in time as they are, but with a quotation or reference to the caſe where the point is argued at large; but if the caſe conſiſt part of repetition, part of new matter, the repetition is only to be omitted.

Thirdly, As to the *Antinomiae*, caſes judged to the contrary, it were too great a truſt to refer to the judgment of the compoſers of this work, to decide the law either way, except there be a current ſtream of judgments of later times; and then I reckon the contrary caſes amongſt caſes obſolete, of which I have ſpoken before: nevertheleſs this diligence ſhould be uſed, that ſuch caſes of contradiction be ſpecially noted and collected, to the end thoſe doubts, that have been ſo long militant, may either by aſſembling all the judges in the exchequer chamber, or by parliament, be put into certainty. For to do it by bringing them in queſtion under feigned parties, is to be diſliked. *Nil habeat forum ex ſcenâ.*

Fourthly, All idle queries, which are but ſeminaries of doubts, and incertainties, are to be left out and omitted, and no queries ſet down, but of great doubts well debated and left undecided for difficulty; but no doubting or upſtarting queries, which though they be touched in argument for explanation, yet were better to die than to be put into the books.

Lastly, Caſes reported with too great prolixity, ſhould be drawn into a more compendious report; not in the nature of an abridgment, but tautologies and impertinences to be cut off: as for miſprinting, and inſenſible reporting, which many times confound the ſtudents, that will be *obiter* amended; but more principally, if there be any thing in the report which is not well warranted by the record, that is alſo to be rectified: the courſe being thus compiled, then it reſteth but for your Majeſty to appoint ſome grave and ſound lawyers, with ſome honourable ſtipend, to be * reporters for the time to come, and then this is ſettled for all times.

* This Conſtitution of Reporters I obtained of the King, after I was Chancellor; and there are two appointed with a 100 *l.* a year a-piece ſtipend.

FOR

FOR the auxiliary books that conduce to the ſtudy and ſcience of the law, they are three; Inſtitutions, a treatiſe *de regulis juris*; and a better book *de verborum ſignificatione*, or terms of the law. For the inſtitutions, I know well there be books of introductions (wherewith ſtudents begin) of good worth, eſpecially *Littleton* and *Fitzherbert*'s *Natura brevium*; but they are no ways of the nature of an inſtitution; the office whereof is to be a key and general preparation to the reading of the courſe. And principally it ought to have two properties; the one a perſpicuous and clear order or method; and the other, an univerſal latitude or comprehenſion, that the ſtudents may have a little pre-notion of every thing, like a model towards a great building. For the treatiſe *de regulis juris*, I hold it, of all other things, the moſt important to the health (as I may term it) and good inſtitutions of any laws: it is indeed like the ballaſt of a ſhip, to keep all upright and ſtable; but I have ſeen little in this kind, either in our law, or other laws, that ſatisfieth me. The naked rule or maxim doth not the effect: it muſt be made uſeful by good differences, ampliations, and limitations; warranted by good authorities; and this not by raiſing up of quotations and references, but by diſcourſe and deducement in a juſt tractate. In this I have travelled my ſelf, at the firſt more curſorily, ſince with more diligence, and will go on with it, if God and your Majeſty will give me leave. And I do aſſure your Majeſty, I am in good hope, that when Sir *Edward Coke*'s Reports, and my rules and deciſions ſhall come to poſterity, there will be (whatſoever is now thought) queſtion, who was the greater lawyer? For the books of the terms of the law there is a poor one, but I wiſh a diligent one, wherein ſhould be compriſed not only the expoſition of the terms of the law, but of the words of all antient records and precedents.

FOR the abridgments I could wiſh, if it were poſſible, that none might uſe them, but ſuch as had read the courſe firſt, that they might ſerve for repertories to learned lawyers, and not to make a lawyer in haſte; but ſince that cannot be, I wiſh there were a good abridgment compoſed of the two that are extant, and in better order. So much for the common law.

Statute Law.

FOR the reforming and recompiling of the ſtatute law, it conſiſteth of four parts.

1. THE firſt, to diſcharge the books of thoſe ſtatutes, where the caſe, by alteration of time, is vaniſhed; as *Lombards*, *Jews*, *Gauls* half pence, *&c.* Thoſe may nevertheleſs remain in the libraries for antiquities, but no reprinting of them. The like of ſtatutes long ſince expired and clearly repealed; for if the repeal be doubtful, it muſt be ſo propounded to the parliament.

2. THE next is, to repeal all ſtatutes which are ſleeping and not of uſe, but yet ſnaring and in force; in ſome of thoſe it will perhaps be requiſite to ſubſtitute ſome more reaſonable law inſtead of them agreeable to the time; in others a ſimple repeal may ſuffice.

3. THE third, that the grievouſneſs of the penalty in many ſtatutes be mitigated, though the ordinances ſtand.

4. The laſt is, the reducing of concurrent ſtatutes heaped one upon another to one clear and uniform law. Towards this there hath been already, upon my motion, and your Majeſty's direction, a great deal of good pains taken; my Lord *Hobart*, my ſelf, Serjeant *Finch*, Mr. *Heneage Finch*, Mr. *Noye*, Mr. *Hackwell*, and others, whoſe labours being of a great bulk, it is not fit now to trouble your Majeſty with any further particularity therein; only by this you may perceive the work is already advanced: but becauſe this part of the work, which concerneth the ſtatute laws, muſt of neceſſity come to parliament, and the houſes will beſt like that which themſelves guide, and the perſons that themſelves employ, the way were to imitate the precedent of the commiſſioners for the canon laws in 27 *Hen.* VIII, and 4 *Edw.* VI, and the commiſſioners for the union of the two realms, *primo* of your Majeſty, and ſo to have the commiſſioners named by both houſes; yet not with a precedent power to conclude, but only to prepare and propound to parliament: this is the beſt way, I conceive, to accompliſh this excellent work, of honour to your Majeſty's times, and of good to all times; which I ſubmit to your Majeſty's better judgment.

AN OFFER TO KING *JAMES*, OF A DIGEST to be made of the Laws of England.

Moſt excellent Sovereign,

AMONGST the degrees and acts of ſovereign, or rather heroical honour, the firſt or ſecond is the perſon and merit of a lawgiver. Princes that govern well are fathers of the people: But if a father breed his ſon well, or allow him well while he liveth, but leave him nothing at his death, whereby both he and his children, and his childrens children may be the better, ſurely the care and piety of a father is not in him complete. So Kings, if they make a portion of an age happy by their good government, yet if they do not make teſtaments (as God Almighty doth) whereby a perpetuity of good may deſcend to their country, they are but mortal and tranſitory benefactors. *Domitian*, a few days before he died, dream'd that a golden head did riſe upon the nape of his neck: which was truly performed in the golden age that followed his times for five ſucceſſions. But Kings, by giving their ſubjects good laws, may (if they will) in their own time, join and graft this golden head upon their own necks after their death. Nay, they may make

make *Nabuchodonozor*'s image of monarchy golden from head to foot. And if any of the meaner ſort of politicks, that are ſighted only to ſee the worſt of things, think, that laws are but cobwebs, and that good Princes will do well without them, and bad will not ſtand much upon them; the diſcourſe is neither good nor wiſe. For certain it is, that good laws are ſome bridle to bad Princes, and as a very wall about government. And if tyrants ſometime make a breach into them, yet they mollify even tyranny it ſelf, as *Solon*'s laws did the tyranny of *Piſiſtratus:* and then commonly they get up again, upon the firſt advantage of better times. Other means to perpetuate the memory and merits of ſovereign Princes are inferiour to this. Buildings of temples, tombs, palaces, theatres, and the like, are honourable things, and look big upon poſterity: But *Conſtantine* the Great gave the name well to thoſe works, when he uſed to call *Trajan* that was a great builder, *Parietaria*, wall-flower, becauſe his name was upon ſo many walls: So if that be the matter, that a King would turn wall-flower, or pellitory of the wall, with coſt he may. *Adrian*'s vein was better, for his mind was to wreſtle a fall with time, and being a great progreſſor through all the *Roman* Empire, whenever he found any decays of bridges, or high-ways, or cuts of rivers and ſewers, or walls, or banks, or the like, he gave ſubſtantial order for their repair with the better. He gave alſo multitudes of charters and liberties for the comfort of corporations and companies in decay: ſo that his bounty did ſtrive with the ruins of time. But yet this, though it were an excellent diſpoſition, went but in effect to the caſes and ſhells of a common-wealth. It was nothing to virtue or vice. A bad man might indifferently take the benefit and eaſe of his ways and bridges as well as a good; and bad people might purchaſe good charters. Surely the better works of perpetuity in Princes, are thoſe that waſh the inſide of the cup: Such as are foundations of colleges and lectures for learning and education of youth; likewiſe foundations and inſtitutions of orders and fraternities, for nobleneſs, enterpriſe, and obedience, and the like. But yet theſe alſo are but like plantations of orchards and gardens, in plots and ſpots of ground here and there; they do not till over the whole kingdom and make it fruitful, as doth the eſtabliſhing of good laws and ordinances, which makes a whole nation to be as a well-ordered college or foundation.

This kind of work in the memory of times, is rare enough to ſhew it excellent; and yet not ſo rare, as to make it ſuſpected for impoſſible, inconvenient, or unſafe. *Moſes*, that gave laws to the *Hebrews*, becauſe he was the ſcribe of God himſelf, is fitter to be named for honour's ſake to other lawgivers, than to be numbred or ranked amongſt them. *Minos*, *Lycurgus*, and *Solon*, are examples for themes of grammar ſcholars. For ancient perſonages and characters now-a-days uſe to wax children again; though that parable of *Pindarus* be true, the beſt thing is water: for common and trivial things are many times the beſt, and rather deſpiſed upon pride, becauſe they are vulgar, than upon cauſe or uſe. Certain it is, that the laws of thoſe three lawgivers had great prerogatives. The firſt of fame, becauſe they were the pattern amongſt the *Grecians:* The ſecond of laſting, for they continued longeſt without alteration: The third, of a ſpirit of reviver, to be often oppreſſed, and often reſtored.

Amongst the ſeven Kings of *Rome* four were law-givers: for it is moſt true, that a diſcourſer of *Italy* ſaith; There was never ſtate ſo well ſwaddled in the infancy, as the *Roman* was by the virtue of their firſt Kings; which was a principal cauſe of the wonderful growth of that ſtate in after-times.

THE *Decemvirs* laws were laws upon laws, not the original; for they grafted laws of *Graecia*, upon the *Roman* ſtock of laws and cuſtoms: But ſuch was their ſucceſs, as the twelve tables which they compiled were the main body of the laws which framed and wielded the great body of that eſtate. Theſe laſted a long time, with ſome ſupplementals and the Pretorian edicts *in Albo*; which were, in reſpect of laws, as writing tables in reſpect of braſs; the one to be put in and out, as the other is permanent. *Lucius Cornelius Sylla* reformed the laws of *Rome*: For that man had three ſingularities, which never tyrant had but he; That he was a law-giver, that he took part with the nobility, and that he turned private man, not upon fear, but upon confidence.

CAESAR long after deſired to imitate him only in the firſt, for otherwiſe he relied upon new men; and for reſigning his power *Seneca* deſcribeth him right: *Caeſar gladium citò condidit, nunquam poſuit.* *Caeſar* ſoon ſheathed his ſword, but never put it off. And himſelf took it upon him, ſaying in ſcorn of *Sylla*'s reſignation; *Sylla neſcivit literas, dictare non potuit*, *Sylla* knew no letters, he could not dictate. But for the part of a law-giver, *Cicero* giveth him the attribute; *Caeſar ſi ab eo quaereretur, quid egiſſet in togâ; leges ſe reſpondiſſet multas & praeclaras tuliſſe*; if you had aſked *Caeſar* what he did in the gown, he would have anſwered, that he made many excellent laws. His nephew *Auguſtus* did tread the ſame ſteps, but with deeper print, becauſe of his long reign in peace; whereof one of the poets of his time ſaith,

Pace datâ terris, animum ad civilia vertit
Jura ſuum; legeſque tulit juſtiſſimus auctor.

FROM that time there was ſuch a race of wit and authority, between the commentaries and deciſions of the lawyers, and the edicts of the Emperors, as both law and lawyers were out of breath. Whereupon *Juſtinian* in the end recompiled both, and made a body of laws ſuch as might be wielded, which himſelf calleth glorioufly, and yet not above truth, the edifice or ſtructure of a ſacred temple of juſtice, built indeed out of the former ruins of books, as materials, and ſome novel conſtitutions of his own.

IN *Athens* they had *Sexviri*, (as *Æſchines* obſerveth) which were ſtanding commiſſioners, who did watch to diſcern what laws waxed improper for the times, and what new law did in any branch croſs a former law, and ſo *ex officio* propounded their repeal.

KING *Edgar* collected the laws of this kingdom, and gave them the ſtrength of a faggot bound, which formerly were diſperſed; which was more glory to him than his ſailing about this iſland with a potent fleet: for that was, as the ſcripture ſaith, *via navis in mari*, the way of a ſhip in the ſea; it vaniſhed, but this laſteth. *Alphonſo* the wiſe, (the ninth of that name) King of *Caſtile*, compiled the digeſt of the laws of *Spain*, intitled the *Siete Partidas*; an excellent work which he finiſhed in ſeven years. And as *Tacitus* noteth well, that the capitol, though built in the beginnings of *Rome*, yet was fit for the great monarchy that came after; ſo that building of laws ſufficeth the greatneſs of the empire of *Spain*, which ſince hath enſued.

LEWIS XI had it in his mind (though he performed it not) to have made one conſtant law of *France*, extracted out of the civil *Roman* law, and the cuſtoms of provinces which are various, and the King's edicts, which with the *French* are ſtatutes. Surely he might have done well, if, like as he brought the crown (as he ſaid himſelf) from Page, ſo he had brought his people from

Lackey; not to run up and down for their laws to the civil law, and the ordinances and the cuſtoms and the diſcretions of courts and diſcourſes of philoſophers, as they uſe to do.

KING *Henry* VIII, in the twenty ſeventh year of his reign, was authorized by parliament to nominate thirty-two commiſſioners, part eccleſiaſtical, and part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the land; but it took not effect: for the acts of that King were commonly rather proffers and fames, than either well-grounded, or well purſued: but, I doubt, I err in producing ſo many examples. For as *Cicero* ſaid to *Caeſar*, ſo I may ſay to your Majeſty, *Nil vulgare te dignum videri poſſit.* Though indeed this well underſtood is far from vulgar: For that the laws of the moſt kingdoms and ſtates, have been like buildings of many pieces, and patch'd up from time to time according to occaſions, without frame or model.

Now for the laws of *England* (if I ſhall ſpeak my opinion of them without partiality either to my profeſſion or country) for the matter and nature of them, I hold them wiſe, juſt, and moderate laws: they give to God, they give to *Caeſar*, they give to the ſubject, what appertaineth. It is true they are as mixt as our language, compounded of *Britiſh*, *Roman*, *Saxon*, *Daniſh*, *Norman* cuſtoms: And ſurely as our language is thereby ſo much the richer, ſo our laws are likewiſe by that mixture the more complete.

NEITHER doth this attribute leſs to them, than thoſe that would have them to have ſtood out the ſame in all mutations. For no tree is ſo good firſt ſet, as by tranſplanting and grafting. I remember what happened to *Calliſthenes*, that followed *Alexander*'s court, and was grown into ſome diſpleaſure with him, becauſe he could not well brook the *Perſian* adoration. At a ſupper (which with the *Grecians* was a great part talk,) he was deſired (the King being preſent) becauſe he was an eloquent man, to ſpeak of ſome theme, which he did; and choſe for his theme, the praiſe of the *Macedonian* nation, which though it were but a filling thing to praiſe men to their faces, yet he performed it with ſuch advantage of truth, and avoidance of flattery, and with ſuch life, as was much applauded by the hearers. The King was the leſs pleaſed with it, not loving the man, and by way of diſcountenance ſaid: It was eaſy to be a good orator in a pleaſing theme. But, ſaith he to him, turn your ſtyle, and tell us now of our faults, that we may have the profit, and not you the praiſe only; which he preſently did with ſuch quickneſs, that *Alexander* ſaid, That malice made him eloquent then, as the theme had done before. I ſhall not fall into either of theſe extremes, in this ſubject of the laws of *England*; I have commended them before for the matter, but ſurely they aſk much amendment for the form; which to reduce and perfect, I hold to be one of the greateſt dowries that can be conferred upon this kingdom: which work, for the excellency, as it is worthy your Majeſty's act and times, ſo it hath ſome circumſtance of propriety agreeable to your perſon. God hath bleſſed your Majeſty with poſterity, and I am not of opinion that Kings that are barren are fitteſt to ſupply perpetuity of generations, by perpetuity of noble acts; but contrariwiſe, that they that leave poſterity are the more intereſted in the care of future times; that as well their progeny, as their people, may participate of their merit.

YOUR Majeſty is a great maſter in juſtice and judicature, and it were pity the fruit of that your virtue, ſhould not be tranſmitted to the ages to come. Your Majeſty alſo reigneth in learned times, the more (no doubt) in regard of your own perfection in learning, and your patronage thereof. And it hath been

been the miſhap of works of this nature, that the leſs learned time hath (ſometimes) wrought upon the more learned, which now will not be ſo. As for my ſelf, the law was my profeſſion, to which I am a debtor: ſome little helps I have of other arts, which may give form to matter; and I have now (by God's merciful chaſtiſement, and by his ſpecial providence,) time and leiſure to put my talent, or half talent, or what it is, to ſuch exchanges as may perhaps exceed the intereſt of an active life. Therefore, as in the beginning of my troubles, I made offer to your Majeſty to take pains in the ſtory of *England*, and in compiling a method and digeſt of your laws, ſo have I performed the firſt (which reſted but upon my ſelf,) in ſome part; and I do in all humbleneſs renew the offer of this later (which will require help and aſſiſtance) to your Majeſty, if it ſhall ſtand with your good pleaſure to employ my ſervice therein.

THE

ELEMENTS

OF THE

COMMON LAW

OF

ENGLAND.

CONTAINING,

I. A Collection of ſome principal Rules and Maxims of the COMMON LAW, with their Latitude and Extent.

II. The USE of the COMMON LAW, for preſervation of our Perſons, Goods, and good Names; according to the Laws and Cuſtoms of this Land.

TO HER

Sacred MAJESTY.

I Do here moſt humbly preſent and dedicate to your ſacred Majeſty a ſheaf and cluſter of fruit of the good and favourable ſeaſon, which by the influence of your happy government we enjoy; for if it be true that *ſilent leges inter arma*, it is alſo as true, that your Majeſty is in a double reſpect the life of our laws; once, becauſe without your authority they are but *litera mortua*;

mortua; and again, becauſe you are the life of our peace, without which laws are put to ſilence. And as the vital ſpirits do not only maintain and move the body, but alſo contend to perfect and renew it; ſo your ſacred Majeſty, who is *anima legis*, doth not only give unto your laws force and vigour; but alſo hath been careful of their amendment and reforming; wherein your Majeſty's proceeding may be compared, as in that part of your government (for if your government be conſidered in all the parts, it is incomparable) with the former doings of the moſt excellent Princes that ever have reigned, whoſe ſtudy altogether hath been always to adorn and honour times of peace, with the amendment of the policy of their laws. Of this proceeding in *Auguſtus Caeſar* the teſtimony yet remains.

Pace data terris, animum ad civilia vertit.
Jura ſuum; legeſque tulit juſtiſſimus auctor.

Hence was collected the difference between *geſta in armis* and *acta in toga*, whereof *Cicero* diſputeth thus:

EQUID eſt, quod tam proprie dici poſſit actum ejus, qui togatus in republica cum poteſtate imperioque verſatus ſit, quam lex? quaere acta Gracchi: leges Semproniae proferentur. Quaere Syllae: Corneliae. Quid? Cn. Pompeii tertius conſulatus in quibus actis conſiſtit? nempe in legibus. A Caeſare ipſo ſi quaereres quidnam egiſſet in urbe et in toga: leges multas ſe reſponderet et praeclaras tuliſſe. Phil. I. c. 7.

THE ſame deſire long after did ſpring in the Emperor *Juſtinian*, being rightly called *Ultimus Imperatorum Romanorum*, who having peace in the heart of his empire, and making his wars proſperouſly in the remote places of his dominions by his lieutenants, choſe it for a monument and honour of his government, to reviſe the *Roman* laws from infinite volumes and much repugnancy, into one competent and uniform corps of law; of which matter himſelf doth ſpeak glorioufly, and yet aptly, calling it, *propr um et ſanctiſſimum templum juſtitiae conſecratum*: a work of great excellency indeed, as may well appear, in that *France*, *Italy* and *Spain*, which have long ſince ſhaken off the yoke of the *Roman* Empire, do yet nevertheleſs continue to uſe the policy of that law: but more excellent had the work been, ſave that the more ignorant and obſcure time undertook to correct the more learned and flouriſhing time. To conclude with the domeſtick example of one of your Majeſty's royal anceſtors: King *Edward* I, your Majeſty's famous progenitor, and the principal law-giver of our nation, after he had in his younger years given himſelf ſatisfaction in the glory of arms, by the enterprize of the Holy Land, and having inward peace (otherwiſe than for the invaſions which himſelf made upon *Wales* and *Scotland*, parts far diſtant from the centre of the realm,) he bent himſelf to endow his ſtate with ſundry notable and fundamental laws, upon which the government hath ever ſince principally reſted. Of this example, and others the like, two reaſons may be given; the one, becauſe that Kings, which either by the moderation of their natures, or the maturity of their years and judgment, do temper their magnanimity with juſtice, do wiſely conſider and conceive of the exploits of ambitious wars, as actions rather great than good; and ſo diſtaſted with that courſe of winning honour, they convert their minds rather to do ſomewhat for the better uniting of human ſociety, than for the diſſolving or diſturbing of the ſame. Another reaſon is, becauſe times of peace for the moſt part drawing with them abundance of wealth, and fineſſe of cunning, do draw alſo in further conſequence multitude of ſuits and controverſies, and abuſes of

law by evaſions and devices; which inconveniences in ſuch time growing more general, do more inſtantly ſollicit for the amendment of laws to reſtrain and repreſs them.

YOUR Majeſty's reign having been bleſſed from the higheſt with inward peace, and falling into an age wherein if ſcience be increaſed, conſcience is rather decay'd; and if mens wits be great, their wills be greater; and wherein alſo laws are multiplied in number, and ſlackened in vigour and execution; it was not poſſible but that not only ſuits in law ſhould multiply and increaſe (whereof a great part are always unjuſt) but alſo that all the indirect courſes and practices to abuſe law and juſtice ſhould have been much attempted and put in ure, which no doubt had bred greater enormities, had they not by the royal policy of your Majeſty, by the cenſure and foreſight of your Council-table and Star-chamber, and by the gravity and integrity of your benches, been repreſſed and reſtrained; for it may be truly obſerved, that as concerning frauds in contracts, bargains, and aſſurances, and abuſes of laws by delays, covins, vexations, and corruptions in informers, jurors, miniſters of juſtice, and the like, there have been ſundry excellent ſtatutes made in your Majeſty's time, more in number, and more politick in proviſion, than in any of your Majeſty's predeceſſors times.

BUT I am an unworthy witneſs to your Majeſty of an higher intention and project, both by that which was publiſhed by your Chancellor in full parliament from your royal mouth, in the five and thirtieth of your happy reign; and much more by that which I have been ſince vouchſafed to underſtand from your Majeſty, imparting a purpoſe for theſe many years infuſed into your Majeſty's breaſt, to enter into a general amendment of the ſtate of your laws, and to reduce them to more brevity and certainty, that the great hollowneſs and unſafety in aſſurances of lands and goods may be ſtrengthened, the ſwerving penalties that lie upon many ſubjects removed, the execution of many profitable laws revived, the judge better directed in his ſentence, the counſellor better warranted in his counſel, the ſtudent eaſed in his reading, the contentious ſuitor that ſeeketh but vexation diſarmed, and the honeſt ſuitor that ſeeketh but to obtain his right relieved; which purpoſe and intention, as it did ſtrike me with great admiration when I heard it, ſo it might be acknowledged to be one of the moſt choſen works, and of the higheſt merit and beneficence towards the ſubject, that ever entered into the mind of any King; greater than we can imagine, becauſe the imperfections and dangers of the laws are covered under the clemency and excellent temper of your Majeſty's government. And though there be rare precedents of it in government, as it cometh to paſs in things ſo excellent, there being no precedent full in view but of *Juſtinian*, yet I muſt ſay as *Cicero* ſaid to *Caeſar*, *Nihil vulgare te dignum videri poteſt*; and as it is no doubt a precious ſeed ſown in your Majeſty's heart by the hand of God's divine Majeſty, ſo I hope, in the maturity of your Majeſty's own time, it will come up and bear fruit. But to return thence whither I have been carried; obſerving in your Majeſty, upon ſo notable proofs and grounds, this diſpoſition in general of a prudent and royal regard to the amendment of your laws, and having by my private labour and travel collected many of the grounds of the common law, the better to eſtabliſh and ſettle a certain ſenſe of law, which doth now too much waver in incertainty, I conceived the nature of the ſubject, beſides my particular obligation, was ſuch, as I ought not to dedicate the ſame to any other than to your ſacred Majeſty; both becauſe though the collection be mine, yet the laws are yours; and becauſe it is your Majeſty's

reign

reign that hath been as a goodly ſeaſonable ſpring weather to the advancing of all excellent arts of peace. And ſo concluding with a prayer anſwerable to the preſent argument, which is, that God will continue your Majeſty's reign in a happy and renowned peace, and that he will guide both your policy and arms to purchaſe the continuance of it with ſurety and honour, I moſt humbly crave pardon, and commend your Majeſty to the divine preſervation.

Your ſacred MAJESTY'S *moſt humble*

and obedient ſubject and ſervant,

FRANCIS BACON.

THE

PREFACE.

I HOLD every man a debtor to his profeſſion; from the which as men of courſe do ſeek to receive countenance and profit, ſo ought they of duty to endeavour themſelves by way of amends, to be a help and ornament thereunto. This is performed in ſome degree by the honeſt and liberal practice of a profeſſion, when men ſhall carry a reſpect not to deſcend into any courſe that is corrupt and unworthy thereof, and preſerve themſelves free from the abuſes wherewith the ſame profeſſion is noted to be infected; but much more is this performed if a man be able to viſit and ſtrengthen the roots and foundation of the ſcience it ſelf; thereby not only gracing it in reputation and dignity, but alſo amplifying it in perfection and ſubſtance. Having therefore from the beginning come to the ſtudy of the laws of this realm, with a deſire no leſs (if I could attain unto it) that the ſame laws ſhould be the better for my induſtry, than that my ſelf ſhould be the better for the knowledge of them: I do not find that by mine own travel, without the help of authority, I can in any kind confer ſo profitable an addition unto that ſcience, as by collecting the rules and grounds diſperſed throughout the body of the ſame laws; for hereby no ſmall light will be given in new caſes, wherein the authorities do ſquare and vary, to confirm the law, and to make it received one way; and in caſes wherein the law is cleared by authority, yet nevertheleſs to ſee more profoundly into the reaſon of ſuch judgments and ruled caſes, and thereby to make more uſe of them for the deciſion of other caſes more doubtful; ſo that the incertainty of law, which is the principal and moſt juſt challenge that is made to the laws of our nation at this time, will, by this new ſtrength laid to the foundation, be ſomewhat the more ſettled and corrected: neither will the uſe hereof be only in deciding of doubts, and helping ſoundneſs of judgment, but further in gracing of argument, in correcting unprofitable ſubtlety, and reducing the ſame to a more ſound and ſubſtantial ſenſe of law, in reclaiming vulgar errors, and generally the amendment in ſome meaſure of the very nature and complexion of the whole law; and therefore the concluſions of reaſons of this kind are worthily and aptly called

called by a great civilian *legum leges*, laws of laws, for that many *placita legum*, that is, particular and poſitive learnings of laws do eaſily decline from a good temper of juſtice, if they be not rectified and governed by ſuch rules.

Now for the manner of ſetting down of them, I have in all points, to the beſt of my underſtanding and foreſight, applied my ſelf not to that which might ſeem moſt for the oſtentation of mine own wit or knowledge, but to that which may yield moſt uſe and profit to the ſtudents and profeſſors of our laws.

And therefore, whereas theſe rules are ſome of them ordinary and vulgar, that now ſerve but for grounds and plain ſongs to the more ſhallow and impertinent ſort of arguments; others of them are gathered and extracted out of the harmony and congruity of caſes, and are ſuch as the wiſeſt and deepeſt ſort of lawyers have in judgment and uſe, though they be not able many times to expreſs and ſet them down.

For the former ſort, which a man that ſhould rather write to raiſe an high opinion of himſelf, than to inſtruct others, would have omitted, as trite and within every man's compaſs; yet nevertheleſs I have not affected to neglect them, but have choſen out of them ſuch as I thought good: I have reduced them to a true application, limiting and defining their bounds, that they may not be read upon at large, but reſtrained to a point of difference: for as both in the law and other ſciences, the handling of queſtions by common-place without aim or application is the weakeſt; ſo yet nevertheleſs many common principles and generalities are not to be contemned, if they be well derived and deduced into particulars, and their limits and excluſions duly aſſigned: for there be two contrary faults and extremities in the debating and ſifting out of the law, which may be beſt noted in two ſeveral manner of argu ments. Some argue upon general grounds, and come not near the point in queſtion; others without laying any foundation of a ground or difference, do looſely put caſes, which though they go near the point, yet being ſo ſcattered, prove not, but rather ſerve to make the law appear more doubtful, than to make it more plain.

Secondly, whereas ſome of theſe rules have a concurrence with the civil *Roman* law, and ſome others a diverſity, and many times an oppoſition, ſuch grounds which are common to our law and theirs I have not affected to diſguiſe into other words than the civilians uſe, to the end they might ſeem invented by me, and not borrowed or tranſlated from them: No, but I took hold of it as a matter of greater authority and majeſty to ſee and conſider the concordance between the laws penn'd, and as it were dictated *verbatim* by the ſame reaſon: on the other ſide, the diverſities between the civil *Roman* rules of law and ours, happening either when there is ſuch an indifferency of reaſon ſo equally balanced as the one law embraceth one courſe, and the other the contrary, and both juſt, after either is once poſitive and certain; or where the laws vary in regard of accommodating the law to the different conſiderations of eſtate, I have not omitted to ſet down.

Thirdly, whereas I could have digeſted theſe rules into a certain method or order, which I know would have been more admired, as that which would have made every particular rule through coherence and relation unto other rules ſeem more cunning and deep, yet I have avoided ſo to do, becauſe this delivering of knowledge in diſtinct and diſ-joined aphoriſms, doth leave the wit of man more free to turn and toſs, and make uſe of that which is ſo delivered to more ſeveral purpoſes and applications; for we ſee that all the ancient wiſdom and ſcience was wont to be delivered in that form, as may

be ſeen by the parables of *Solomon*, and by the aphoriſms of *Hippocrates*, and the moral verſes of *Theognis* and *Phocylides*, but chiefly the precedent of the civil law, which hath taken the ſame courſe with their rules, did confirm me in my opinion.

FOURTHLY, Whereas I know very well it would have been more plauſible and more current, if the rules, with the expoſitions of them, had been ſet down either in *Latin* or in *Engliſh*; that the harſhneſs of the language might not have diſgraced the matter; and that civilians, ſtates-men, ſcholars, and other ſenſible men might not have been barred from them; yet I have forſaken that grace and ornament of them, and only taken this courſe: the rules themſelves I have put in *Latin*, not purified further than the propriety of the terms of the law would permit; which language I choſe as the briefeſt to contrive the rules compendiouſly, the apteſt for memory, and of the greateſt authority and majeſty to be avouched and alledged in argument: and for the expoſitions and diſtinctions, I have retained the peculiar language of our law, becauſe it ſhould not be ſingular among the books of the ſame ſcience, and becauſe it is moſt familiar to the ſtudents and profeſſors thereof, and becauſe that it is moſt ſignificant to expreſs conceits of law; and to conclude, it is a language wherein a man ſhall not be inticed to hunt after words, but matter; and for the excluding of any other than profeſſed lawyers, it was better manners to exclude them by the ſtrangeneſs of the language, than by the obſcurity of the conceit; which is as though it had been written in no private and retired language, yet by thoſe that are not lawyers, would for the moſt part not have been underſtood, or, which is worſe, miſtaken.

FIFTHLY, Whereas I might have made more flouriſh and oſtentation of reading, to have vouched the authorities, and ſometimes to have enforced or noted upon them, yet I have abſtained from that alſo; and the reaſon is, becauſe I judged it a matter undue and prepoſterous to prove rules and maxims, wherein I had the example of Mr. *Littleton* and Mr. *Fitzherbert*, whoſe writings are the inſtitutions of the law of *England:* whereof the one forbeareth to vouch any authority altogether; the other never reciteth a book, but when he thinketh the caſe ſo weak of credit in it ſelf, as it needs a ſurety; and theſe two I did far more eſteem than Mr. *Perkins* or Mr. *Staundford* that have done the contrary. Well will it appear to thoſe that are learned in the laws, that many of the caſes are judged caſes, either within the books, or of freſh report, and moſt of them fortified by judged caſes, and ſimilitude of reaſon; though in ſome few caſes I did intend expreſly to weigh down the authority by evidence of reaſon, and therein rather to correct the law, than either to ſooth a received error, or by unprofitable ſubtlety which corrupteth the ſenſe of law, to reconcile contrarieties. For theſe reaſons I reſolved not to derogate from the authority of the rules, by vouching of any of the authorities of the caſes, though in mine own copy I had them quoted: for although the meanneſs of mine own perſon may now at firſt extenuate the authority of this collection, and that every man is adventurous to controul; yet ſurely according to *Gamaliel*'s reaſon, if it be of weight, time will ſettle and authorize it; if it be light and weak, time will reprove it. So that to conclude, you have here a work without any glory of affected novelty, or of method, or of language, or of quotations and authorities, dedicated only to uſe, and ſubmitted only to the cenſure of the learned, and chiefly of time.

LASTLY, there is one point above all the reſt I account the moſt material for making theſe reaſons indeed profitable and inſtructing; which is, that they be not ſet down alone like ſhort dark oracles, which every man will be

content ſtill to allow to be true, but in the mean time they give little light or direction; but I have attended them, (a matter not practiſed, no not in the civil law to any purpoſe; and for want whereof indeed, the rules are but as proverbs, and many times plain fallacies,) with a clear and perſpicuous expoſition, breaking them into caſes, and opening them with diſtinctions, and ſometimes ſhewing the reaſons whereupon they depend, and the affinity they have with other rules. And though I have thus, with as good diſcretion and fore-ſight as I could, ordered this work, and as I might ſay, without all colours or ſhews, huſbanded it beſt to profit, yet nevertheleſs not wholly truſting to mine own judgment, having collected three hundred of them; I thought good before I brought them all into form, to publiſh ſome few, that by the taſte of other mens opinions in this firſt, I might receive either approbation in mine own courſe, or better advice for the altering of the other which remain: for it is great reaſon that that which is intended to the profit of others, ſhould be guided by the conceits of others.

THE

MAXIMS of the LAW.

Reg. 1. *In jure non remota cauſa ſed proxima ſpectatur.*

IT were infinite for the law to judge the cauſes of cauſes, and their impulſions one of another; therefore it contenteth itſelf with the immediate cauſe, and judgeth of acts by that, without looking to any farther degree.

6 H. 8. Dy. 2. As if an annuity be granted *pro conſilio impenſo & impendendo*, and the grantee commit treaſon, whereby he is impriſoned, ſo that the grantor cannot have acceſs unto him for his counſel, yet nevertheleſs the annuity is not determined by this *non feaſance*; yet it was the grantee's act and default to commit the treaſon, whereby the impriſonment grew: but the law looketh not ſo far, but excuſeth him, becauſe the not giving counſel was compulſory, and not voluntary, in regard of the impriſonment.

Litt. cap. Diſcon. 2 H. 4. 5. 26 H. 8. 2. So if a parſon make a leaſe, and be deprived or reſign, the ſucceſſors ſhall avoid the leaſe; and yet the cauſe of deprivation, and more ſtrongly of a reſignation, moved from the party himſelf: but the law regardeth not that, becauſe the admiſſion of the new incumbent is the act of the ordinary.

So if I be ſeiſed of an advowſon in groſs, and an uſurpation be had againſt me, and at the next avoidance I uſurp arere, I ſhall be remitted: and yet the preſentation, which is the act remote, is mine own act; but the admiſſion of my clerk, whereby the inheritance is reduced to me, is the act of the ordinary.

7 H. 7. 25. So if I covenant with *I. S.* a ſtranger, in conſideration of natural love to my ſon, to ſtand ſeiſed to the uſe of the ſaid *I. S.* to the intent he ſhall infeoff my ſon; by this no uſe ariſeth to *I. S.* becauſe the law doth reſpect that there is no immediate conſideration between me and *I. S.*

So

So if I be bound to enter into a ſtatute before the mayor of the ſtaple at ſuch a day, for the ſecurity of a hundred pound, and the obligee, before the day, accept of me a leaſe of an houſe in ſatisfaction; this is no plea in debt upon my obligation, and yet the end of that ſtatute was but ſecurity of money: but becauſe the entring into this ſtatute it ſelf, which is the immediate act whereunto I am bound, is a corporal act which lieth not in ſatisfaction, therefore the law taketh no conſideration that the remote intent was for money.

So if I make a * feoffment in fee, upon condition that the feoffee ſhall infeoff over, and the feoffee be diſſeiſed, and a deſcent caſt, and then the feoffee bind himſelf in a ſtatute, which ſtatute is diſcharged before the recovery of the land: this is no breach of the condition, becauſe the land was never liable to the ſtatute, and the poſſibility that it ſhould be liable upon the recovery, the law doth not reſpect.

So if I enfeoff two, upon condition to enfeoff, and one of them take a wife, the condition is not broken, and yet there is a remote poſſibility that the jointenant may die, and then the feme is entitled to dower.

So if a man purchaſe land in fee-ſimple, and die without iſſue; in the firſt degree the law reſpecteth dignity of ſex and not proximity; and therefore the remote heir on the part of the father ſhall have it before the near heir on the part of the mother: but in any degree paramount the firſt the law reſpecteth it not, and therefore the near heir by the grand-mother on the part of the father, ſhall have it before the remote heir of the grand-father on the part of the father. Plowd. 450.

This rule faileth in covinous acts, which though they be conveyed through many degrees and reaches, yet the law taketh heed to the corrupt beginning, and counteth all as one entire act.

As if a feoffment be made of lands held by Knights ſervice to *I. S.* upon condition that within a certain time he ſhall infeoff *I. D.* which feoffment to *I. D.* ſhall be to the uſe of the wife of the firſt feoffor for her jointure, *&c.* this feoffment is within the ſtatute of 32 *H.* VIII. *nam dolus circuitu non purgatur.*

In like manner this rule holdeth not in criminal acts, except they have a full interruption; becauſe when the intention is matter of ſubſtance, and that which the law doth principally behold, there the firſt motive will be principally regarded, and not the laſt impulſion. As if *I. S.* of malice prepenſed diſchargeth a piſtol at *I. D.* and miſſeth him, whereupon he throws down his piſtol and flies, and *I. D.* purſueth him to kill him, whereupon he turneth and killeth *I. D.* with a dagger; if the law ſhould conſider the laſt impulſive cauſe, it ſhould ſay that it was in his own defence; but the law is otherwiſe, for it is but a purſuance and execution of the firſt murderous intent.

But if *I. S.* had fallen down, his dagger drawn, and *I. D.* had fallen by haſte upon his dagger, there *I. D.* had been *felo de ſe*, and *I. S.* ſhall go quit. 44 Ed. 3. 44.

Also you may not confound the act with the execution of the act; nor the entire act with the laſt part, or the conſummation of the act.

For if a diſſeiſor enter into religion, the immediate cauſe is from the party, though the deſcent be caſt in law; but the law doth but execute the act which the party procureth, and therefore the deſcent ſhall not bind, *& ſic e converſo.* Lit. cap. de diſc.

* M. 40. & 41. El. Julius Winnington's caſe, ore report per le treſreverend Judge, le Snr Coke, lib. 2.

If

21 Eliz. "If a leaſe for years be made for rendring a rent, and the leſſee make a feoffment of part, and the leſſor enter, the immediate cauſe is from the law in reſpect of the forfeiture, though the entry be the act of the party: but that is but the purſuance and putting in execution of the title which the law giveth: and therefore the rent or condition ſhall be apportioned.

24 H. 8. fo. 4. Dy.

So in the binding of a right by a deſcent, you are to conſider the whole time from the diſſeiſin to the deſcent caſt; and if at all times the perſon be not privileged, the deſcent binds.

9 H. 7. 24. 3 & 4 P & M. Lr. 143. And therefore if a feme covert be diſſeiſed, and the baron dieth, and ſhe taketh a new huſband, and then the deſcent is caſt: or if a man that is not *infra quatuor maria*, be diſſeiſed, and he return into *England*, and go over ſea again, and then a deſcent is caſt, this deſcent bindeth, becauſe of the *interim* when the perſons might have entered; and the law reſpecteth not the ſtate of the perſon at the laſt time of the deſcent caſt, but a continuance from the very diſſeiſin to the deſcent.

So if baron and feme be, and they join in a feoffment of the wife's land rendring a rent, and the baron die, and the feme taketh a new huſband before any rent-day, and he accepteth the rent, the feoffment is affirmed for ever.

Reg. 2. *Non poteſt adduci exceptio ejuſdem rei, cujus petitur diſſolutio.*

It were impertinent and contrary in it ſelf, for the law to allow of a plea in bar of ſuch matter as is to be defeated by the ſame ſuit; for it is included: otherwiſe a man ſhould never come to the end and effect of his ſuit, but be cut off in the way.

And therefore if tenant in tail of a manor, whereunto a villain is regardant, diſcontinue and die, and the right of the entail deſcend to the villain himſelf, who brings a *formedon*, and the diſcontinuee pleadeth villainage; this is no plea, becauſe the diveſting of the manor, which is the intention of the ſuit, doth include this plea, becauſe it determineth the villainage.

So if tenant in antient demeſne, be diſſeiſed by the Lord, whereby the ſeigniory is ſuſpended, and the diſſeiſee bring his aſſize in the court of the Lord, franck fee is no plea, becauſe the ſuit is brought to undo the diſſeiſin, and to revive the ſeigniory in ancient demeſne.

7 H. 4. 39. 7 H. 6. 44. So if a man be attainted and executed, and the heir bring a writ of error upon the attainder, and the corruption of blood by the ſame attainder be pleaded, to interrupt his conveying in the ſame writ of error; this is no plea, for then he were without remedy ever to reverſe the attainder.

38 Ed. 3. 32. So if tenant in tail diſcontinue for life rendring a rent, and the iſſue brings a *formedon*, and the warranty of his anceſtor with aſſets be pleaded againſt him, and the aſſets is laid to be no other but his reverſion with the rent; this is no plea, becauſe the *formedon* which is brought to undo this diſcontinuance doth incluſively undo this new reverſion in fee with the rent thereunto annexed.

But whether this rule may take place where the matter of the plea is not to be avoided in the ſame ſuit but in another ſuit, is doubtful; and I rather take the law to be that this rule doth extend to ſuch caſes, for otherwiſe the party were at a miſchief, in reſpect the exceptions and bars might be pleaded croſs either of them in the contrary ſuit, and ſo the party altogether prevented and intercepted to come by his right.

So if a man be attainted by two ſeveral attainders, and there is error in them both, there is no reaſon but that there ſhould be a remedy open for the heir to reverſe thoſe attainders being erroneous, as well if they be twenty as one.

And therefore if in a writ of error brought by the heir of one of them, the attainder ſhould be a plea peremptory; and ſo again if in error brought of that other, the former ſhould be a plea, theſe were to exclude him utterly of his right; and therefore it ſhould be a good replication to ſay that he hath a writ of error depending of that alſo, and ſo the court ſhall proceed: but no judgment ſhall be given till both pleas be diſcuſſed; and if either plea be found without error, there ſhall be no reverſal either of the one or of the other; and if he diſcontinue either writ, then it ſhall be no longer a plea; and ſo of ſeveral outlawries in a perſonal action.

And this ſeemeth to me more reaſonable, than that generally an outlawry or an attainder ſhould be no plea in a writ of error brought upon a diverſe outlawry or an attainder, as 7 *H.* IV. and 7 *H.* VI. ſeem to hold; for that is a remedy too large for the miſchief; for there is no reaſon but if any of the outlawries or attainders be indeed without error, but it ſhould be a peremptory plea to the perſon in a writ of error as well as in any other action.

But if a man levy a fine *ſur conuſaunce de droit come ceo que il ad de ſon done*, and ſuffer a recovery of the ſame lands, and there be error in them both, he cannot bring error firſt of the fine, becauſe by the recovery his title of error is diſcharged and releaſed in law *incluſivè*, but he muſt begin with the error upon the recovery (which he may do, becauſe a fine executed barreth no titles that accrue *de puiſne temps* after the fine levied) and ſo reſtore himſelf to his title of error upon the fine: but ſo it is not in the former caſe of the attainder; for a writ of error to a former attainder is not given away by a ſecond, except it be by expreſs words of an act of parliament, but only it remaineth a plea to his perſon while he liveth, and to the conveyance of his heir after his death.

But if a man levy a fine where he hath nothing in the land, which inureth by way of concluſion only, and is executory againſt all purchaſes and new titles which ſhall grow to the conuſor afterwards, and he purchaſe the land, and ſuffer a recovery to the conuſee, and in both fine and recovery, there is error; this fine is *Janus bifrons*, and will look forward, and bar him of his writ of error brought of the recovery; and therefore it will come to the reaſon of the firſt caſe of the attainder, that he muſt reply that he hath a writ alſo depending of the ſame fine, and ſo demand judgment.

To return to our firſt purpoſe, like law it is if tenant in tail of two acres make two ſeveral diſcontinuances to ſeveral perſons for life rendring a rent, and bringeth a *formedon* of both, and in the *formedon* brought of white acre the reverſion and rent reſerved upon black acre is pleaded, and ſo contrary. I take it to be a good replication, that he hath a *formedon* alſo upon that depending, whereunto the tenant hath pleaded the deſcent of the reverſion of white acre, and ſo neither ſhall be a bar; and yet there is no doubt but if in a *formedon* the warranty of tenant in tail with aſſets be pleaded, it is no replication for the iſſue to ſay, that a *praecipe* dependeth brought by *I. S.* to evict the aſſets.

But the former caſe ſtandeth upon the particular reaſon before mentioned.

Reg. 3. *Verba fortius accipiuntur contra proferentem.*

THIS rule, that a man's deeds and his words ſhall be taken ſtrongliest againſt himſelf, though it be one of the moſt common grounds of the law, it is notwithſtanding a rule drawn out of the depth of reaſon; for firſt it is a ſchool-maſter of wiſdom and diligence in making men watchful in their own buſineſs; next it is author of much quiet and certainty, and that in two ſorts: firſt, becauſe it favoureth acts and conveyances executed, taking them ſtill beneficially for the grantees and poſſeſſors: and ſecondly, becauſe it makes an end of many queſtions and doubts about conſtruction of words; for if the labour were only to pick out the intention of the parties, every judge would have a ſeveral ſenſe; whereas this rule doth give them a ſway to take the law more certainly one way.

BUT this rule, as all others which are very general, is but a ſound in the air, and cometh in ſometimes to help and make up other reaſons without any great inſtruction or direction; except it be duly conceived in point of difference, where it taketh place, and where not. And firſt we will examine it in grants, and then in pleadings.

THE force of this rule is in three things, in ambiguity of words, in implication of matter, and deducing or qualifying the expoſition of ſuch grants as were againſt the law, if they were taken according to their words.

2 R. 3. 18. 21 H. 7. 29. AND therefore if *I. S.* ſubmit himſelf to arbitrement of all actions and ſuits between him and *I. D.* and *I. N.* it reſts ambiguous whether the ſubmiſſion ſhall be intended *collectivè* of joint actions only, or *diſtributivè* of ſeveral actions alſo; but becauſe the words ſhall be taken ſtrongliest againſt *I. S.* that ſpeaks them, it ſhall be underſtood of both: for if *I. S.* had ſubmitted himſelf to arbitrement of all actions and ſuits which he hath now depending, except it be ſuch as are between him and *I. D.* and *I. N.* now it ſhall be underſtood *collectivè* only of joint actions, becauſe in the other caſe large conſtruction was hardeſt againſt him that ſpeaks, and in this caſe ſtrict conſtruction is hardeſt.

3 Aſſ. p. 10. SO if I grant ten pounds rent to baron and feme, and if the baron die that the feme ſhall have three pounds rent, becauſe theſe words reſt ambiguous whether I intend three pounds by way of increaſe, or three pounds by way of reſtraint and abatement of the former rent of ten pounds, it ſhall be taken ſtrongliest againſt me that am the grantor, that it is three pounds addition to the ten: but if I had let land to baron and feme for three lives, reſerving ten pounds *per annum*, and if the baron die reſerving three pounds, this ſhall be taken contrary to the former caſe, to abridge my rent only to three pounds.

14 H. 8. 28 H. 8. D. 19. SO if I demiſe *omnes boſcos meos in villa de Dale* for years, this paſſeth the ſoil; but if I demiſe all my lands in *Dale exceptis boſcis*, this extendeth to the trees only, and not to the ſoil.

SO if I ſow my lands with corn, and let it for years, the corn paſſeth to my leſſee, if I except it not; but if I make a leaſe for life to *I. S.* upon condition that upon requeſt he ſhall make me a leaſe for years, and *I. S.* ſoweth his ground, and then I make requeſt, *I. S.* may well make me a leaſe excepting his corn, and not break the condition.

8 H. 7. 32 H. 6. SO if I have free warren in mine own hand, and let my land for life, not mentioning the warren, yet the leſſee by implication ſhall have the warren diſcharged and extinct during his leaſe; but if I let the land *una cum libera warrenna*,

warrenna, excepting white acre, there the warren is not by implication reſerved unto me either to be enjoyed or extinguiſhed; but the leſſee ſhall have warren againſt me in white acre.

So if *I. S.* hold of me by fealty and rent only, and I grant the rent, not ſpeaking of the fealty, yet the fealty by implication ſhall paſs, becauſe my grant ſhall be taken ſtrongly as of a rent ſervice, and not of a rent ſecke. 29 Aſſ. pl. 10.

Otherwise had it been if the ſeigniory had been by homage, fealty, and rent, becauſe of the dignity of the ſervice, which could not have paſſed by intendment by the grant of the rent: but if I be ſeiſed of the manor of *Dale* in fee, whereof *I. S.* holds by fealty and rent, and I grant the manor excepting the rent, the fealty ſhall paſs to the grantee, and I ſhall have but a rent ſecke. 44 Ed. 3. 19. 26 Aſſ. pl. 66.

So in grants againſt the law, if I give land to *I. S.* and his heirs males, this is a good fee-ſimple, which is a larger eſtate than the words ſeem to intend, and the word males is void. But if I make a gift in tail, reſerving a rent to me and the heirs of my body, the words of my body are not void, and ſo leave it a rent in fee-ſimple; but the word heirs and all are void, and leaves it but a rent for life; except that you will ſay, it is but a limitation to any my heir in fee-ſimple which ſhall be heir of my body; for it cannot be a rent in tail by reſervation.

But if I give land with my daughter in frank marriage, the remainder to *I. S.* and his heirs, this grant cannot be good in all the parts, according to the words: for it is incident to the nature of a gift in frank marriage, that the donee hold it of the donor; and therefore my deed ſhall be taken ſo ſtrongly againſt my ſelf, * that rather than the remainder ſhall be void, the frank marriage, though it be firſt placed in the deed, ſhall be void as a frank marriage.

But if I give land in frank marriage, reſerving to me and my heirs ten pounds rent, now the frank marriage ſtands good, and the reſervation is void, becauſe it is a limitation of a benefit to my ſelf, and not to a ſtranger.

So if I let white acre, black acre, and green acre to *I. S.* excepting white acre, this exception is void, becauſe it is repugnant; but if I let the three acres aforeſaid, rendring twenty ſhillings rent, *viz.* for white acre ten ſhillings, and for black acre ten ſhillings, I ſhall not diſtrain at all in green acre, but that ſhall be diſcharged of my rent. 4 H. 6. 22. 26 Aſſ. pl. 66.

So if I grant a rent to *I. S.* and his heirs out of my manor of *Dale*, & *obligo manerium & omnia bona & catalla mea ſuper manerium praedictum exiſtentia ad diſtringendum per ballivum domini regis:* this limitation of the diſtreſs to the King's bailiff is void, and it is good to give a power of diſtreſs to *I. S.* the grantee and his bailiffs. 46 Ed. 3. 18.

But if I give land in tail *tenend' de capitalibus dominis per redditum viginti ſolidorum & fidelitatem:* this limitation of tenure to the lord is void; and it ſhall not be good, as in the other caſe, to make a reſervation of twenty ſhillings good unto my ſelf; but it ſhall be utterly void as if no reſervation at all had been made: and if the truth be that I that am the donor hold of the lord paramount by ten ſhillings only, then there ſhall be ten ſhillings only reſerved upon the gift in tail as for owelty. 2 Ed. 4. 5.

* Quaere car le ley ſemble dēe le contrary, entant que in un grant quant lun part del fait ne poit eſtoier ove lauter le darr: ſerra void, auterment in un deviſe & accordant fuit lopin: de Snr Anderſon & Owen Juſt. contra Walmeſley Juſt. P. 40. Eliz. in le caſe de Counteſſe de Warwick & Snr Barkley in com. banco.

So

21 Ed. 3. 49. 31 & 32 H. 8. Dyer 46. Plow. fo. 37. 35 H. 6. 34. So if I give land to *I. S.* and the heirs of his body, and for default of ſuch iſſue *quod tenementum praedictum revertatur ad I. N.* yet theſe words of reſervation will carry a remainder to a ſtranger. But if I let white acre to *I. S.* excepting ten ſhillings rent, theſe words of exception to mine own benefit ſhall never inure to words of reſervation.

But now it is to be noted, that this rule is the laſt to be reſorted to, and is never to be relied upon but where all other rules of expoſition of words fail; and if any other come in place, this giveth place. And that is a point worthy to be obſerved generally in the rules of the law, that when they encounter and croſs one another in any caſe, it be underſtood which the law holdeth worthier, and to be preferred; and it is in this particular very notable to conſider, that this being a rule of ſome ſtrictneſs and rigor, doth not as it were its office, but in abſence of other rules which are of more equity and humanity; which rules you ſhall afterwards find ſet down with their expoſitions and limitations.

But now to give a taſte of them to this preſent purpoſe, it is a rule that general words ſhall never be ſtretched too far in intendment, which the civilians utter thus; *Verba generalia reſtringuntur ad habilitatem perſonae, vel ad aptitudinem rei.*

14 Aſſ. pl. 25. Therefore if a man grant to another, common *intra metas & bundas villae de Dale*, and part of the vill is his ſeveral, and part his waſte and common; the grantee ſhall not have common in the ſeveral: and yet this is the ſtrongeſt expoſition againſt the grantor.

Lit. cap. cond. So it is a rule, *Verba ita ſunt intelligenda, ut res magis valeat quam pereat:* and therefore if I give land to *I. S.* and his heirs, *reddend. quinque libras annuatim* to *I. D.* and his heirs, this implies a condition to me that am the grantor; yet it were a ſtronger expoſition againſt me, to ſay the limitation ſhould be void, and the feoffment abſolute.

10 Ed. 4. 1. So it is a rule, that the law will not intend a wrong, which the civilians utter thus; *Ea eſt accipienda interpretatio, quae vitio caret.* And therefore if the executors of *I. S.* grant *omnia bona & catalla ſua*, the goods which they have as executors will not paſs, becauſe *non conſtat* whether it may not be a devaſtation, and ſo a wrong; and yet againſt the treſpaſſer that taketh them out of their hand, they ſhall declare *quod bona ſua cepit.*

So it is a rule, that words are ſo to be underſtood that they work ſomewhat, and be not idle and frivolous: *verba aliquid operari debent, verba cum effectu ſunt accipienda.* And therefore if I bargain and ſell you four parts of my manor of *Dale*, and ſay not in how many parts to be divided, this ſhall be conſtrued four parts of five, and not of ſix nor ſeven, *&c.* becauſe that it is the ſtrongeſt againſt me; but on the other ſide, it ſhall not be intended four parts of four parts, or the whole of four quarters; and yet that were ſtrongeſt of all, but then the words were idle and of none effect.

3 H. 6. 20. So it is a rule, *Divinatio non interpretatio eſt, quae omnino recedit a litera:* and therefore if I have a fee-farm-rent iſſuing out of white acre of ten ſhillings, and I reciting the ſame reſervation do grant to *I. S.* the rent of five ſhillings *percipiend' de reddit' praedict' & de omnibus terris & tenementis meis in Dale*, with a clauſe of diſtreſs, although there be atturnment, yet nothing paſſeth out of my former rent; and yet that were ſtrongeſt againſt me to have it a double rent, or grant of part of that rent with an enlargement of a diſtreſs in the other land, but for that it is againſt the words, becauſe *copulatio verborum indicat acceptionem in eodem ſenſu*, and the word *de* (*anglice* out of) may be taken in two ſenſes, that is, either as a greater ſum out of a leſs, or as

as a charge out of land, or other principal intereſt; and that the coupling of it with lands and tenements, *viz.* I reciting that I am ſeiſed of ſuch a rent of ten ſhillings, do grant five ſhillings *percipiend' de eodem reddit'*, it is good enough without atturnment; becauſe *percipiend' de &c.* may well be taken for *parcella de &c.* without violence to the words; but if it had been *de reddit' praedict'*, although *I. S.* be the perſon that payeth me the foreſaid rent of ten ſhillings, yet it is void: and ſo it is of all other rules of expoſition of grants, when they meet in oppoſition with this rule they are preferred.

Now to examine this rule in pleadings as we have done in grants, you ſhall find that in all imperfections of pleadings, whether it be in ambiguity of words and double intendments, or want of certainty and averments, the plea ſhall be ſtrictly and ſtrongly againſt him that pleads.

For ambiguity of words, if in a writ of entry upon diſſeiſin, the tenant pleads jointenancy with *I. S.* of the gift and feoffment of *I. D.* judgment *de briefe*, the demandant ſaith that long time before *I. D.* any thing had, the demandant himſelf was ſeiſed in fee *quouſque praedict' I. D. ſuper poſſeſſionem ejus intravit*, and made a joint feoffment, whereupon he the demandant reentred, and ſo was ſeiſed until by the defendant alone he was diſſeiſed; this is no plea, becauſe the word *intravit* may be underſtood either of a lawful entry, or of a tortious; and the hardeſt againſt him ſhall be taken, which is, that it was a lawful entry; therefore he ſhould have alledged preciſely that *I. D. diſſeiſivit*.

So upon ambiguities that grow by reference, if an action of debt be brought againſt *I. N.* and *I. P.* ſheriffs of *London* upon an eſcape, and the plaintiff doth declare upon an execution by force of a recovery in the priſon of *Ludgate ſub cuſtodia I. S. & I. D.* then ſheriffs in 1 K. *H.* VIII. and that he ſo continued *ſub cuſtodia I. B. & I. G.* in 2 K. *H.* VIII. and ſo continued *ſub cuſtodia I. N. & I. L.* in 3 K. *H.* VIII. and then was ſuffered to eſcape: *I. N.* and *I. L.* plead that before the eſcape ſuppoſed at ſuch a day *anno ſuperius in narratione ſpecificato*, the ſaid *I. D.* and *I. S. ad tunc vicecomites* ſuffered him to eſcape; this is no good plea, becauſe there be three years ſpecified in the declaration, and it ſhall be hardeſt taken that it was 1 or 3 *H.* VIII. when they were out of office; and yet it is nearly induced by the *ad tunc vicecomites*, which ſhould leave the intendment to be of that year in which the declaration ſuppoſeth that they were ſheriffs; but that ſufficeth not, but the year muſt be alledged in fact, for it may be miſlaid by the plaintiff, and therefore the defendants meaning to diſcharge themſelves by a former eſcape, which was not in their time, muſt alledge it preciſely. 3 E. 6. Dy. 66.

For incertainty of intendment, if a warranty collateral be pleaded in bar, and the plaintiff by replication to avoid the warranty ſaith, that he entred upon the poſſeſſion of the defendant, *non conſtat*, whether this entry was in the life of the anceſtor or after the warranty attached; and therefore it ſhall be taken in the hardeſt ſenſe, that it was after the warranty deſcended, if it be not otherwiſe averred. 26 H. 8.

For impropriety of words, if a man plead that his anceſtor died by proteſtation ſeiſed, and that *I. S.* abated, *&c.* this is no plea, for there cannot be an abatement except there be a dying ſeiſed alledged in fact; and an abatement ſhall not be improperly taken for diſſeiſin in pleading, *car parols font pleas.* 38 H. 6. 18. 39 H. 6. 5.

For repugnancy, if a man in avowry declare that he was ſeiſed in his demeſne as of fee of white acre, and being ſo ſeiſed did demiſe the ſaid white acre to *I. S. habendum*, the moiety for twenty-one years from the date of

the deed, the other moiety from the ſurrender, expiration, or determination of the eſtate of *I. D. qui tenet prædict' medietatem ad terminum vitæ ſuæ reddend'* 40 s. rent: this declaration is inſufficient, becauſe the ſeiſin that he hath alledged in himſelf in his demeſne as of fee in the whole, and the ſtate for life of a moiety are repugnant; and it ſhall not be cured by taking the laſt which is expreſſed to controll the former, which is but general and formal; but the plea is naught, and yet the matter in law had been good to have intitled him to have diſtrained for the whole rent.

BUT the ſame reſtraint follows this rule in pleading that was before noted in grants: for if the caſe be ſuch as falleth within another rule of pleading, this rule may not be urged.

9 Ed. 4. 4 Ed. 6. Plow. AND therefore it is a rule that a bar is good to a common intent, though not to every intent. As if a debt be brought againſt five executors, and three of them make default, and two appear and plead in bar a recovery had againſt them two of 300 *l.* and nothing in their hands over and above that ſum: if this bar ſhould be taken ſtrongleſt againſt them, it ſhould be intended that they might have abated the firſt ſuit, becauſe the other three were not named, and ſo the recovery not duly had againſt them; but becauſe of this other rule the bar is good: for that the more common intent will ſay, that they two only did adminiſter, and ſo the action well conſidered; rather than to imagine, that they would have loſt the benefit and advantage of abating the writ.

SO there is another rule, that in pleading a man ſhall not diſcloſe that which is againſt himſelf: and therefore if it be matter that is to be ſet forth on the other ſide, then the plea ſhall not be taken in the hardeſt ſenſe, but in the moſt beneficial, and to be left unto the contrary party to alledge.

28 H. 8. Dy. fol. 17. AND therefore if a man be bound in an obligation, that if the feme of the obligee do deceaſe before the feaſt of St. *John the Baptiſt*, which ſhall be in the year of our Lord 1598. without iſſue of her body by her huſband lawfully begotten then living, that then the bond ſhall be void; and in debt brought upon this obligation the defendants plead that the feme died before the ſaid feaſt without iſſue of her body then living: if this plea ſhould be taken ſtrongleſt againſt the defendant, then ſhould it be taken that the feme had iſſue at the time of her death, but this iſſue died before the feaſt; but that ſhall not be ſo underſtood, becauſe it makes againſt the defendant, and it is to be brought in of the plaintiff's ſide, and that without traverſe.

SO if in a detinue brought by a feme againſt the executors of her huſband for her reaſonable part of the goods of her huſband, and her demand is of a moiety, and ſhe declares upon the cuſtom of the realm, by which the feme is to have a moiety, if no iſſue be had between her and her huſband, and the third part if there be iſſue had, and declareth that her huſband died without iſſue had between them; if this count ſhould be hardlieſt conſtrued againſt the party, it ſhould be intended that her huſband had iſſue by another wife, though not by her, in which caſe the feme is but to have the third part likewiſe; but that ſhall not be ſo intended, becauſe it is matter of reply to be ſhewed of the other ſide.

AND ſo it is of all other rules of pleadings, theſe being ſufficient not only for the exact expounding of theſe other rules, but *obiter* to ſhew how this rule which we handle is put by when it meets with any other rule.

AS for acts of parliament, verdicts, judgments, *&c.* which are not words of parties, in them this rule hath no place at all, neither in deviſes and wills, upon ſeveral reaſons; but more eſpecially it is to be noted, that in evidence

it

it hath no place, which yet ſeems to have ſome affinity with pleadings, eſpecially when demurrer is joined upon the evidence.

And therefore if land be given by will by *H. C.* to his ſon *I. C.* and the heirs males of his body begotten; the remainder to *F. C.* and the heirs males of his body begotten; the remainder to the heirs males of the body of the deviſor; the remainder to his daughter *S. C.* and the heirs of her body, with a clauſe of perpetuity; and the queſtion comes upon the point of forfeiture in an aſſize taken by default, and evidence is given, and demurrer upon evidence, and in the evidence given to maintain the entry of the daughter upon a forfeiture, it is not ſet forth nor averred that the deviſor had no other iſſue male, yet the evidence is good enough, and it ſhall be ſo intended; and the reaſon hereof cannot be, becauſe a jury may take knowledge of matters not within the evidence; and the court contrariwiſe cannot take knowledge of any matters not within the pleas: for it is clear that if the evidence had been altogether remote, and not proving the iſſue there, although the jury might find it, yet a demurrer might well be taken upon the evidence.

But I take the reaſon of difference between pleadings, which are but openings of the caſe, and evidences which are the proofs of an iſſue, to be, that pleadings being but to open the verity of the matter in fact indifferently on both parts, have no ſcope and concluſion to direct the conſtruction and intendment of them, and therefore muſt be certain; but in evidence and proofs the iſſue, which is the ſtate of the queſtion and concluſion, ſhall incline and apply all the proofs as tending to that concluſion.

Another reaſon is, that pleadings muſt be certain, becauſe the adverſe party may know whereto to anſwer, or elſe he were at a miſchief, which miſchief is remedied by a demurrer; but in evidence if it be ſhort, impertinent, or incertain, the adverſe party is at no miſchief, becauſe it is to be thought that the jury will paſs againſt him; yet nevertheleſs the jury is not compellable to ſupply the defect of evidence out of their own knowledge, though it be in their liberty ſo to do; therefore the law alloweth a demurrer upon evidence alſo.

Reg. 4. *Quod ſub certa forma conceſſum vel reſervatum eſt, non trahitur ad valorem vel compenſationem.*

The law permitteth every man to part with his own intereſt, and to qualify his own grant, as it pleaſeth himſelf; and therefore doth not admit any allowance or recompence if the thing be not taken as it is granted.

So in all profits *a prender*, if I grant common for ten beaſts, or ten loads of wood out of my coppice, or ten loads of hay out of my meads, to be taken for three years; he ſhall not have common for thirty beaſts, or thirty loads of wood or hay the third year, if he forbear for the ſpace of two years: here the time is certain and preciſe. 17 H. 6. 10.

So if the place be limited, or if I grant eſtovers to be ſpent in ſuch a houſe, or ſtone towards the reparation of ſuch a caſtle; although the grantee do burn of his fuel and repair of his own charge, yet he can demand no allowance for that he took it not.

So if the kind be ſpecified, as if I let my park reſerving to my ſelf all the deer and ſufficient paſture for them, if I do decay the game whereby there is no deer, I ſhall not have quantity of paſture anſwerable to the feed of ſo many deer as were upon the ground when I let it; but am without any remedy except I repleniſh the ground again with deer.

But

But it may be thought that the reaſon of theſe caſes is the default and laches of the grantee, which is not ſo.

For put the caſe that the houſe where the eſtovers ſhould be ſpent be overthrown by the act of God, as by tempeſt, or burnt by the enemies of the King, yet there is no recompence to be made.

And in the ſtrongeſt caſe where it is in default of the grantor, yet he ſhall make void his own grant rather than the certain form of it ſhould be wreſted to an equity or valuation.

As if I grant common *ubicunque averia mea ierint*, the commoner cannot otherwiſe entitle himſelf, except that he averr that in ſuch grounds my beaſts have gone and fed; and if I never put in any, but occupy my grounds otherwiſe, he is without remedy; but if I put in, and after by poverty or otherwiſe I deſiſt, yet the commoner may continue; contrariwiſe, if the words of the grant had been *quandocunque averia mea ierint*, for there it depends continually upon the putting in of my beaſts, or at leaſt the general ſeaſons when I put them in, not upon every hour or moment.

But if I grant *tertiam advocationem* to *I. S.* if he neglect to take his turn *ea vice*, he is without remedy: but if my wife be before intitled to dower, and I die, then my heir ſhall have two preſentments, and my wife the third, and my grantee ſhall have the fourth; and it doth not impugn this rule at all, becauſe the grant ſhall receive that conſtruction at the firſt that it was in-
29 H. 8. Dy. 38. tended ſuch an avoidance as may be taken and enjoyed; as if I grant *proximam advocationem* to *I. D.* and then grant *proximam advocationem* to *I. S.* this ſhall be intended the next to the next, which I may lawfully grant or diſpoſe. *Quaere*

But if I grant *proximam advocationem* to *I. S.* and *I. N.* is incumbent, and I grant by preciſe words, *illam advocationem, quam poſt mortem, reſignationem, tranſlationem, vel deprivationem I. N. immediate fore contigerit*; now the grant is merely void, becauſe I had granted that before, and it cannot be taken againſt the words.

Reg. 5. *Neceſſitas inducit privilegium quoad jura privata.*

The law chargeth no man with default where the act is compulſory and not voluntary, and where there is not a conſent and election; and therefore if either there be an impoſſibility for a man to do otherwiſe, or ſo great a perturbation of the judgment and reaſon as in preſumption of law man's na-
4 Ed. 6. Pl. com. Staundf. ture cannot overcome, ſuch neceſſity carrieth a privilege in it ſelf.

Necessity is of three ſorts, neceſſity of conſervation of life, neceſſity of obedience, and neceſſity of the act of God, or of a ſtranger.

Staundf. First of conſervation of life, if a man ſteal viands to ſatisfy his preſent hunger, this is no felony nor larceny.

So if divers be in danger of drowning by the caſting away of ſome boat or barge, and one of them get to ſome plank, or on the boat's ſide to keep himſelf above water, and another to ſave his life thruſt him from it, whereby he is drowned; this is neither *ſe defendendo* nor by miſadventure, but juſtifiable.

Cond. 13. 6. per Brooke. So if divers felons be in a goal, and the goal by caſualty is ſet on fire,
15 H. 7. 2. per Keeble. whereby the priſoners get forth; this is no eſcape, nor breaking of priſon.

14 H. 7. 29. per Read. So upon the ſtatute, that every merchant that ſetteth his merchandize on land without ſatisfying the cuſtomer or agreeing for it (which agreement
4 Ed. 6. vid. Pl. com. 4 to 20. is conſtrued to be in certainty) ſhall forfeit his merchandize, and if it is ſo that

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by tempeſt a great quantity of the merchandize is caſt over-board, whereby the merchant agrees with the cuſtomer by eſtimation, which falleth out ſhort of the truth, yet the over-quantity is not forfeited; where note that neceſſity diſpenſeth with the direct letter of a ſtatute law.

So if a man have right to land, and do not make his entry for terror of force, the law allows him a continual claim, which ſhall be as beneficial unto him as any entry; ſo ſhall a man ſave his default of appearance by *cretain de eau*, and avoid his debt by *dureſſe*, whereof you ſhall find proper caſes elſewhere. Lit ſect. 419. 12 H. 4. 20. 14 H. 4. 30. B. 38 H 6. 11. 28 H. 6. 8. 39 H. 6. 50.

The ſecond neceſſity is of obedience; and therefore where baron and feme commit a felony, the feme can neither be principal nor acceſſary; becauſe the law intends her to have no will, in regard of the ſubjection and obedience ſhe owes to her huſband. Staundf. 26. 2 Ed. 3. Fitzh. Cor. 160.

So one reaſon among others why ambaſſadors are uſed to be excuſed of practices againſt the ſtate where they reſide, except it be in point of conſpiracy, which is againſt the law of nations and ſociety, is, becauſe *non conſtat* whether they have it *in mandatis*, and then they are excuſed by neceſſity of obedience.

So if a warrant or precept come from the King to fell wood upon the ground whereof I am tenant for life or for years, I am excuſed in waſte.

The third neceſſity is of the act of God, or of a ſtranger, as if I be particular tenant for years of a houſe, and it be overthrown by grand tempeſt, or thunder and lightning, or by ſudden floods, or by invaſion of enemies, or if I have belonging unto it ſome cottage which hath been infected, whereby I can procure none to inhabit them, no workmen to repair them, and ſo they fall down; in all theſe caſes I am excuſed in waſte: but of this laſt learning when and how the act of God and ſtrangers do excuſe, there be other particular rules. B. Waſt. 31. 43 Ed. 3. 6. 19 Ed. 3. per Th. Fitz. Waſt. 30. 32 Ed. 3. Fitz. Waſt. 105. 44 Ed. 3. 31.

But then it is to be noted, that neceſſity privilegeth only *quoad jura privata*, for in all caſes if the act that ſhould deliver a man out of the neceſſity be againſt the commonwealth, neceſſity excuſeth not; for *privilegium non valet contra rempublicam:* and as another ſaith, *neceſſitas publica major eſt quam privata:* for death is the laſt and fartheſt point of particular neceſſity, and the law impoſeth it upon every ſubject, that he prefer the urgent ſervice of his prince and country before the ſafety of his life: as if in danger of tempeſt thoſe that are in the ſhip throw over other mens goods, they are not anſwerable; but if a man be commanded to bring ordnance or munition to relieve any of the King's towns that are diſtreſſed, then he cannot for any danger of tempeſt juſtify the throwing of them overboard, for there it holdeth which was ſpoken by the *Roman*, when he alledged the ſame neceſſity of weather to hold him from embarking, *Neceſſe eſt ut eam, non ut vivam.* So in the caſe put before of huſband and wife, if ſhe join in committing treaſon, the neceſſity of obedience doth not excuſe the offence as it doth in felony, becauſe it is againſt the commonwealth.

So if a fire be taken in a ſtreet, I may juſtify the pulling down of the wall or houſe of another man to ſave the row from the ſpreading of the fire; but if I be aſſailed in my houſe in a city or town and diſtreſſed, and to ſave my life I ſet fire on mine own houſe, which ſpreadeth and taketh hold upon other houſes adjoining, this is not juſtifiable, but I am ſubject to their action upon the caſe, becauſe I cannot reſcue mine own life by doing any thing which is againſt the commonwealth: but if it had been but a private treſpaſs, as the going over another's ground, or the breaking of his incloſure when I am purſued for the ſafeguard of my life, it is juſtifiable. 13 H. 8. 16. per Shelley. 12 H. 8. 10. per Brooke. 22 Aſſ. pl 56. 6 Ed. 4. 7. per Sarel.

4 H. 7. 2. THIS rule admitteth an exception when the law doth intend ſome fault or wrong in the party that hath brought himſelf into the neceſſity; ſo that is *neceſſitas culpabilis*. This I take to be the chief reaſon why *ſeipſum defendendo* is not matter of juſtification, becauſe the law intends it hath a commencement upon an unlawful cauſe, becauſe quarrels are not preſumed to grow without ſome wrongs either in words or deeds on either part, and the law that thinketh it a thing hardly triable in whoſe default the quarrel began, ſuppoſeth the party that kills another in his own defence not to be without malice; and therefore as it doth not touch him in the higheſt degree, ſo it putteth him to ſue out his pardon of courſe, and puniſheth him by forfeiture of goods: for where there cannot be any malice nor wrong preſumed, as where a man aſſails me to rob me, and I kill him that aſſaileth me; or if a woman kill him that aſſaileth her to raviſh her, it is juſtifiable without any pardon.

21 H. 7. 13. So the common caſe proveth this exception, that is, if a madman commit a felony, he ſhall not loſe his life for it, becauſe his infirmity came by the act of God: but if a drunken man commit a felony, he ſhall not be excuſed, becauſe his imperfection came by his own default; for the reaſon and loſs of deprivation of will and election by neceſſity and by infirmity is all one, for the lack of *arbitrium ſolutum* is the matter: and therefore as *infirmitas culpabilis* excuſeth not, no more doth *neceſſitas culpabilis*.

Reg. 6. *Corporalis injuria non recipit aeſtimationem de futuro.*

THE law, in many caſes that concern lands or goods, doth deprive a man of his preſent remedy, and turneth him over to a further circuit of remedy, rather than to ſuffer an inconvenience: but if it be queſtion of perſonal pain, the law will not compel him to ſuſtain it and expect remedy, becauſe it holdeth no damage a ſufficient recompence for a wrong which is corporal.

5 Ed. 4. 80. As if the ſheriff make a falſe return that I am ſummoned, whereby I loſe my land; yet becauſe of the inconvenience of drawing all things to incertainty and delay, if the ſheriff's return ſhould not be credited, I am excluded of my averment againſt it, and am put to mine action of deceit againſt the

3 H. 6. 3. ſherif and ſummoners: but if the ſheriff upon a *capias*, return a *cepi corpus*, & *quod eſt languidus in priſona*, there I may come in and falſify the return of the ſheriff to ſave my impriſonment.

So if a man menace me in my goods, and that he will burn certain evidences of my land which he hath in his hand, if I will not make unto him a bond, yet if I enter into bond by this terror, I cannot avoid it by plea, becauſe the law holdeth it an inconvenience to avoid a ſpecialty by ſuch matter of averment; and therefore I am put to mine action againſt ſuch a menacer:

7 Ed. 4. 21. but if he reſtrain my perſon, or threaten me with a battery, or with the burning of my houſe, which is a ſafety and protection to my perſon, or with burning an inſtrument of manumiſſion, which is an evidence of my enfranchiſement; if upon ſuch menace or dureſſe I make a deed, I ſhall avoid it by plea.

13 H. 8. 15. So if a treſpaſſer drive away my beaſts over another's ground, and I purſue
21 H. 7. 28. them to reſcue them, yet am I treſpaſſer to the ſtranger upon whoſe ground I came: but if a man aſſail my perſon, and I fly over another's ground, now am I no treſpaſſer.

THIS ground ſome of the canoniſts do aptly infer out of Chriſt's ſacred mouth, *Amen, eſt corpus ſupra veſtimentum*, where they ſay *veſtimentum* comprehendeth

prehendeth all outward things appertaining to a man's condition, as lands and goods, which they ſay, are not in the ſame degree with that which is corporal; and this was the reaſon of the antient *lex talionis*, *oculus pro oculo*, *dens pro dente*, ſo that by that law *corporalis injuria de praeterito non recipit aeſtimationem:* but our law, when the injury is already executed and inflicted, thinketh it beſt ſatisfaction to the party grieved to relieve him in damage, and to give him rather profit than revenge; but it will never force a man to tolerate a corporal hurt, and to depend upon that inferior kind of ſatisfaction, *ut in dammagiis.*

Reg. 7. *Excuſat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus.*

In capital cauſes *in favorem vitae*, the law will not puniſh in ſo high a degree, except the malice of the will and intention appear; but in civil treſpaſſes and injuries that are of an inferior nature, the law doth rather conſider the damage of the party wronged, than the malice of him that was the wrong doer: and therefore,

The law makes a difference between killing a man upon malice fore-thought, and upon preſent heat: but if I give a man ſlanderous words, whereby I damnify him in his name and credit, it is not material whether I uſe them upon ſudden choler and provocation, or of ſet malice, but in an action upon the caſe I ſhall render damages alike.

So if a man be killed by miſadventnre, as by an arrow at buts, this hath a pardon of courſe: but if a man be hurt or maimed only, an action of treſpaſs lieth, though it be done againſt the party's mind and will, and he ſhall be puniſhed in the law as deeply as if he had done it of malice. Staundf. 16. 6 Ed. 4. 7.

So if a ſurgeon authorized to practiſe, do through negligence in his cure cauſe the party to die, the ſurgeon ſhall not be brought in queſtion of his life; and yet if he do only hurt the wound, whereby the cure is caſt back, and death enſues not, he is ſubject to an action upon the caſe for his miſfeiſance. Staundf. 16.

So if baron and feme be, and they commit felony together, the feme is neither principal nor acceſſary, in regard of her obedience to the will of her huſband: but if baron and feme join in committing a treſpaſs upon land or otherwiſe, the action may be brought againſt them both.

So if an infant within years of diſcretion, or a madman kill another, he ſhall not be impeached thereof; but if they put out a man's eye, or do him like corporal hurt, he ſhall be puniſhed in treſpaſs,

So in felonies the law admitteth the difference of principal and acceſſary, and if the principal die, or be pardoned, the proceeding againſt the acceſſary faileth; but in a treſpaſs, if one command his man to beat you, and the ſervant after the battery die, yet your action of treſpaſs ſtands good againſt the maſter. 35 H. 6. 11; 17 H. 4. 19.

Reg. 8. *AEſtimatio praeteriti delicti ex poſtremo facto nunquam creſcit.*

The law conſtrueth neither penal laws, nor penal facts by intendments, but conſidereth the offence in degree, as it ſtandeth at the time when it is committed; ſo as if any circumſtance or matter be ſubſequent, which laid together with the beginning ſhould ſeem to draw it to a higher nature, yet the law doth not extend or amplify the offence.

11 H. 4. 12. THEREFORE if a man be wounded, and the percuſſor is voluntarily let go at large by the goaler, and after, death enſueth of the hurt, yet this is no felonious eſcape in the goaler.

SO if the villain ſtrike the heir apparent of the lord, and the lord dieth before, and the perſon hurt who ſucceedeth to be lord to the villain dieth after, yet this is no petty treaſon.

SO if a man compaſs and imagine the death of one that after cometh to be King of the land, not being any perſon mentioned within the ſtatute of 25 *Ed.* III. this imagination precedent is not high treaſon.

SO if a man uſe ſlanderous words of a perſon upon whom ſome dignity after deſcends that maketh him a peer of the realm, yet he ſhall have but a ſimple action of the caſe, and not in the nature of a *ſcandalum Magnatum* upon the ſtatute.

SO if *John Stile* ſteal ſix pence from me in money, and the King by his proclamation doth raiſe monies, that the weight of ſilver in the piece now of ſix pence ſhould go for twelve pence, yet this ſhall remain petty larceny and no felony: and yet in all civil reckonings the alteration ſhall take place; as if I contract with a labourer to do ſome work for twelve pence, and the inhancing of money cometh before I pay him, I ſhall ſatisfy my contract with a ſix penny piece ſo raiſed.

SO if a man deliver goods to one to keep, and after retain the ſame perſon into his ſervice, who afterwards goeth away with his goods, this is no
28 H. 8. pl. 2. felony by the ſtatute of 21 *H.* VIII. becauſe he was no ſervant at that time.

IN like manner, if I deliver goods to the ſervant of *I. S.* to keep, and after die, and make *I. S.* my executor; and before any new commandment of *I. S.* to his ſervant for the cuſtody of the ſame goods, his ſervant goeth away with them, this is alſo out of the ſtatute. *Quod nota.*

BUT note that it is ſaid *praeteriti delicti*; for any acceſſary before the fact is
18 Eliz. 175. ſubject to all the contingencies pregnant of the fact, if they be purſuances of the ſame fact: as if a man command or counſel one to rob a man, or beat him grievouſly, and murder enſue, in either caſe he is acceſſary to the murder, *quia in criminalibus praeſtantur accidentia.*

Reg. 9. *Quod remedio deſtituitur ipſa re valet ſi culpa abſit.*

THE benignity of the law is ſuch, as when to preſerve the principles and grounds of law it depriveth a man of his remedy without his own fault, it will rather put him in a better degree and condition than in a worſe; for if it diſable him to purſue his action, or to make his claim, ſometimes it will give him the thing it ſelf by operation of law without any act of his own, ſometimes it will give him a more beneficial remedy.

AND therefore if the heir of the diſſeiſor which is in by deſcent make a leaſe
Lit. ſect. 683. for life, the remainder for life unto the diſſeiſee, and the leſſee for life die, now the franktenement is caſt upon the diſſeiſee by act in law, and thereby he is diſabled to bring his *praecipe* to recover his right; whereupon the law judgeth him in his antient right as ſtrongly as if it had been recovered and executed by action, which operation of law is by an antient term and word of law called a *remitter*; but if there may be aſſigned any default or laches in him, either in accepting the freehold, or in accepting the intereſt that draws the freehold, then the law denieth him any ſuch benefit.

AND therefore if the heir of the diſſeiſor make a leaſe for years, the remainder in fee to the diſſeiſee, the diſſeiſee is not remitted, and yet the remainder

mainder is in him without his own knowledge or aſſent; but becauſe the freehold is not caſt upon him by act in law, it is no remitter. *Quod nota.*

So if the heir of the diſſeiſor infeoff the diſſeiſee and a ſtranger, and make him livery, although the ſtranger die before any agreement or taking of the profits by the diſſeiſee, yet he is not remitted; becauſe though a moiety be caſt upon him by ſurvivor, yet that is but *jus accreſcendi*, and it is no caſting of the freehold upon him by act in law, but he is ſtill as an immediate purchaſer, and therefore no remitter. Lit.

So if the huſband be ſeiſed in the right of his wife, and diſcontinue and die, and the feme takes another huſband, who takes a feoffment from the diſcontinuee to him and his wife, the feme is not remitted; and the reaſon is, becauſe ſhe was once ſole, and ſo a laches in her for not purſuing her right: but if the feoffment taken back had been to the firſt huſband and her ſelf, ſhe had been remitted. Lit. ſect. 666.

YET if the huſband diſcontinue the lands of the wife, and the diſcontinuee make a feoffment to the uſe of the huſband and wife, ſhe is not remitted; but that is upon a ſpecial reaſon, upon the letter of the ſtatute of 27 *H.* VIII. of uſes, that willeth that the *ceſtuy que uſe* ſhall have the poſſeſſion in quality and degree as he had the uſe; but that holdeth place only upon the firſt veſting of the uſe: for when the uſe is abſolutely executed and veſted, then it doth inſue merely the nature of poſſeſſions; as if the diſcontinuee had made a feoffment in fee to the uſe of *I. S.* for life, the remainder to the uſe of baron and feme, and leſſee for life die, now the feme is remitted, *cauſa qua ſupra.* 34 H. 8. Dy.

ALSO if the heir of the diſſeiſor make a leaſe for life, the remainder to the diſſeiſee, who chargeth the remainder, and the leſſee for life dies, the diſſeiſee is not remitted; and the reaſon is, his intermeddling with the wrongful remainder, whereby he hath affirmed the ſame to be in him, and ſo accepted it: but if the heir of the diſſeiſor had granted a rent charge to the diſſeiſee, and afterwards made a leaſe for life, the remainder to the diſſeiſee, and the leſſee for life had died, the diſſeiſee had been remitted; becauſe there appeareth no aſſent or acceptance of any eſtate in the freehold, but only of a collateral charge.

So if the feme be diſſeiſed, and intermarry with the diſſeiſor, who makes a leaſe for life, rendring rent, and dieth leaving a ſon by the ſame feme, and the ſon accepts the rent of the leſſee for life, and then the feme dies, and the leſſee for life dies, the ſon is not remitted; yet the frank tenement was caſt upon him by act in law, but becauſe he had agreed to be in the tortious reverſion by acceptance of the rent, therefore no remitter. 6 Ed. 3. 17. 28 H. 8. pl. 207.

So if tenant in tail diſcontinue, and the diſcontinuee make a leaſe for life, the remainder to the iſſue in tail being within age, and at full age the leſſee for life ſurrendereth to the iſſue in tail, and tenant in tail dies, and leſſee for life dies, yet the ſame iſſue is not remitted; and yet if the iſſue had accepted a feoffment within age, and had continued the taking of the profits when he came of full age, and then the tenant in tail had died, notwithſtanding his taking of the profits he had been remitted: for that which guides the remitter, is, if he be once in of the freehold without any laches: as if the heir of the diſſeiſor enfeoffs the heir of the diſſeiſee, who dies, and it deſcends to a ſecond heir upon whom the frank tenement is caſt by deſcent, who enters and takes the profits, and then the diſſeiſee dies, this is a remitter, *cauſa qua ſupra.*

Lit. ALSO if tenant in tail diſcontinue for life, and take a ſurrender of the leſſee now is he remitted and ſeiſed again by force of the tail, and yet he cometh in by his own act: but this caſe differeth from all other caſes; becauſe the diſcontinuance was but particular at firſt, and the new gained reverſion is but by intendment and neceſſity of law; and therefore is but as it were *ab initio*, with a limitation to determine whenſoever the particular diſcontinuance endeth, and the eſtate cometh back to the antient right.

To proceed from caſes of remitter, which is a great branch of this rule, to other caſes: if executors do redeem goods pledged by their teſtator with their own money, the law doth convert ſo much goods as doth amount to the value of that they laid forth, to themſelves in property, and upon a plea of fully adminiſtred it ſhall be allowed: the reaſon is, becauſe it may be matter of neceſſity for the well adminiſtring of the goods of the teſtator, and executing their truſt that they diſburſe money of their own: for elſe perhaps the goods would be forfeited, and he that had them in pledge would not accept other goods but money, and ſo it is a liberty which the law gives them, and they cannot have any ſuit againſt themſelves; and therefore the law gives them leave to retain ſo much goods by way of allowance: and if there be two executors, and one of them pay the money, he may likewiſe retain againſt his companion, if he have notice thereof.

6 H. 8. pl. 3. Dy.

3 Eliz. 187. pl. 8. BUT if there be an overplus of goods, above the value of that he ſhall diſburſe, then ought he by his claim to determine what goods he doth elect to have in value; or elſe before ſuch election, if his companion do ſell all the goods, he hath no remedy but in the ſpiritual court: for to ſay he ſhould be tenant in common with himſelf and his companion *pro rata* of that he doth lay out, the law doth reject that courſe for intricateneſs.

So if I have a leaſe for years worth 20 *l.* by the year, and grant unto *I. D.* a rent of 10 *l.* a year, and after make him my executor; now *I. D.* ſhall be charged with aſſets 10 *l.* only, and the other 10 *l.* ſhall be allowed and conſidered to him; and the reaſon is, becauſe the not refuſing ſhall be accounted no laches unto him, becauſe an executorſhip is *pium officium*, and matter of conſcience and truſt, and not like a purchaſe to a man's own uſe.

19 H. 8. pl. 7. in fine. 22 Aſſ. 52 F. Rec. in value 23.

2 H. 4. 21. Cond. 185. 2 H. 7. 5. 37 H. 6. 32. LIKE law it is, where the debtor makes the debtee his executor, the debt ſhall be conſidered in the aſſets, notwithſtanding it be a thing in action.

So if I have a rent charge, and grant that upon condition, now though the condition be broken, the grantee's eſtate is not defeated till I have made my claim; but if after ſuch grant my father purchaſe the land, and it deſcend to me, now if the condition be broken, the rent ceaſeth without claim: but if I had purchaſed the land my ſelf, then I had extincted mine own condition, becauſe I had diſabled my ſelf to make my claim: and yet a condition collateral is not ſuſpended by taking back an eſtate; as if I make a feoffment in fee, upon condition that *I. S.* ſhall marry my daughter, and take a leaſe for life from my feoffee, if the feoffee break the condition I may claim to hold in by my fee-ſimple: but the caſe of the charge is otherwiſe, for if I have a rent charge iſſuing out of twenty acres, and grant the rent over upon condition, and purchaſe but one acre, the whole condition is extinct, and the poſſibility of the rent by reaſon of the condition, is as fully deſtroyed as if it had been a rent in *eſſe*.

6 Ed. 6. cond. 133. Lit. pl. 135. 20 H. 7. per Pol. 35 H. 6. Fitz. Barr. 162.

So if the King grant to me the wardſhip of *I. S.* the ſon and heir of *I. S.* when it falleth; becauſe an action of covenant lieth not againſt the King, I ſhall have the thing my ſelf in intereſt.

30 H. 6. pl. Grants 91.

BUT

BUT if I let land to *I. S.* rendring a rent with a condition of re-entry, and *I. S.* be attainted, whereby the leaſe cometh to the King, now the demand upon this land is gone, which would give me benefit of re-entry, and yet I ſhall not have it reduced without demand; and the reaſon of the difference is, 7 H. 6. 40. becauſe my condition in this caſe is not taken away in right, but only ſuſpended by the privilege of the poſſeſſion; for if the King grant the leaſe over, the condition is revived as it was.

ALSO if my tenant for life grant his eſtate to the King, now if I will grant my reverſion over, the King is not compellable to atturn, therefore it ſhall paſs by grant by deed without atturnment.

SO if my tenant for life be, and I grant my reverſion *pur autre vie*, and the grantee die, living *ceſtuy que vie*, now the privity between tenant for life and me is not reſtored, and I have no tenant in *eſſe* to atturn; therefore I may paſs my reverſion without atturnment. *Quod nota.* 9 Ed. 2. Fitz. Atturnments 18.

SO if I have a nomination to a church, and another hath the preſentation, and the preſentation comes to the King, now becauſe the King cannot be attendant, my nomination is turned to an abſolute patronage.

SO if a man be ſeiſed in an * advowſon, and take a wife, and after a title of dower given her, join in impropriating the church, and dieth, now becauſe the feme cannot have the turn becauſe of the perpetual incumbency, ſhe ſhall have all the turns during her life; for it ſhall not be diſimpropriated to the benefit of the heir contrary to the grant of tenant in fee-ſimple. 6 Ed. 6. Dy. 92.

BUT if a man grant the third preſentment to *I. S.* and his heirs, and impropriate the advowſon, now the grantee is without remedy, for he took his grant ſubject to that miſchief at firſt; and therefore it was his laches, and therefore not like the caſe of the dower; and this grant of the third avoidance is not like *tertia pars advocationis*, or *medietas advocationis* upon a tenancy in common of the advowſon: for if two tenants in common be, and an uſurpation be had againſt them, and the uſurper do impropriate, and one of the tenants in common do releaſe, and the other bring his writ of right *de medietate advocationis* and recover; now I take the law to be, that becauſe tenants in common ought to join in preſentment, which cannot now be, he ſhall have the whole patronage: for neither can there be an apportionment that he ſhould preſent all the turns, and his incumbent but to have a moiety of the profits, nor yet the act of impropriation ſhall not be defeated. But as if two tenants in common be of a ward, and they join in a writ of right of ward, and one releaſe, the other ſhall recover the entire ward, becauſe it cannot be divided: ſo ſhall it be in the other caſe, though it be an inheritance, and though he bring his action alone. 45 Ed. 3.

AS if a diſſeiſor be diſſeiſed, and the firſt diſſeiſee releaſe to the ſecond diſſeiſor upon condition, and a deſcent be caſt, and the condition broken; now the mean diſſeiſor, whoſe right is revived, ſhall enter notwithſtanding this deſcent, becauſe his right was taken away by the act of a ſtranger.

BUT if I deviſe land by the ſtatute of † 32 *H.* VIII. and the heir of the deviſor enters and makes a feoffment in fee, and the feoffee dieth ſeiſed, this deſcent binds, and there ſhall not be a perpetual liberty of entry, upon the reaſon that he never had ſeiſin whereupon he might ground his action, but he is at a miſchief by his own laches: and like law is of the King's patentee;

* Vide contra 2 E. 3. fo. 8. que per preſentment del feme ladvowſon eſt deveign diſimpropriate a touts jours quel eſt agree in Snr Cok. Rep. 7. fo. 8. a.

† Le contrary fuit reſolve in Martin Trott's caſe, Paſ. 32 Eliz. in Com. Banco, & Pa. 1 Jac. ib. vide 7 R. 2. Scire fac. 3. 41 E. 3. 14. per Finchden.

for

for I ſee no reaſonable difference between them and him in the remainder, which is *Littleton*'s caſe.

But note, that the law by operation and matter in fact will never countervail and ſupply a title grounded upon a matter of record; and therefore if I be entitled unto a writ of error, and the land deſcend unto me, I ſhall never be remitted, no more ſhall I be unto an attaint, except I may alſo have a writ of right.

25 H. 8. Dy. 5.

So if upon my avowry for ſervices, my tenant diſclaim where I may have a writ of right as upon diſclaimer, if the land after deſcend to me, I ſhall never be remitted.

Reg. 10. *Verba generalia reſtringuntur ad habilitatem rei vel perſonae.*

It is a rule that the King's grants ſhall not be taken or conſtrued to a ſpecial intent; it is not ſo with the grants of a common perſon, for they ſhall be extended as well to a foreign intent as to a common intent; yet with this exception, that they ſhall never be taken to an impertinent or a repugnant intent: for all words, whether they be in deeds or ſtatutes, or otherwiſe, if they be general and not expreſs and preciſe, ſhall be reſtrained unto the fitneſs of the matter or perſon.

Perk. pl. 108.

As if I grant common *in omnibus terris meis* in *D.* and I have in *D.* both open grounds and ſeveral, it ſhall not be ſtretched to common in my ſeveral, much leſs in my gardens and orchards.

14 H. 8. 2.

So if I grant to a man *omnes arbores meas creſcentes ſupra terras meas* in *D.* he ſhall not have apple-trees, or other fruit-trees growing in my gardens or orchards, if there be any other trees upon my ground.

41 Ed. 3. 6 19.

So if I grant to *I. S.* an annuity of 10 *l.* a year *pro conſilio impenſo & impendendo*, if *I. S.* be a phyſician, it ſhall be underſtood of his counſel in phyſick; and if he be a lawyer, of his counſel in law.

So if I do let a tenement to *I. S.* near by my dwelling houſe in a borough, provided that he ſhall not erect or uſe any ſhop in the ſame without my licence, and afterwards I licenſe him to erect a ſhop, and *I. S.* is then a miller, he ſhall not by virtue of theſe general words erect a joiner's ſhop.

16 Eliz. 337. Dyer.

So the ſtatute of chanteries that willeth all lands to be forfeited, given or employed to a ſuperſtitious uſe, ſhall not be conſtrued of the glebe lands of parſonages: nay farther, if the lands be given to the Parſon of *D.* to ſay a maſs in his church of *D.* this is out of the ſtatute, becauſe it ſhall be intended but as an augmentation of his glebe; but otherwiſe had it been, if it had been to ſay a maſs in any other church but his own.

So in the ſtatute of wrecks that willeth that goods wreck'd where any live domeſtical creature remains in a veſſel, ſhall be preſerved to the uſe of the owner that ſhall make his claim by the ſpace of one year, doth not extend to freſh victuals or the like, which is impoſſible to keep without periſhing or deſtroying it; for in theſe and the like caſes general words may be taken, as was ſaid, to a rare and foreign intent, but never to an unreaſonable intent.

Reg. 11. *Jura ſanguinis nullo jure civili dirimi poſſunt.*

They be the very words of the civil law, which cannot be amended to explain this rule. *Heres eſt nomen Juris, Filius eſt nomen Naturae:* therefore corruption of blood taketh away the privity of the one, that is, of the

heir, but not of the other, that is, of the ſon; therefore if a man be attainted and murdered by a ſtranger, the eldeſt ſon ſhall not have the appeal, because the appeal is given to the heir, for the youngeſt ſons who are equal in blood ſhall not have it; but if an attainted perſon be killed by his ſon, this is petty treaſon, for that the privity of a ſon remaineth: for I admit the law to be, that if the ſon kill his father or mother it is petty treaſon, and that there remaineth ſo much in our laws of the antient ſootſteps of *poteſtas patria* and natural obedience, which by the law of God is the very inſtance it ſelf; and all other government and obedience is taken but by equity, which I add, becauſe ſome have thought to weaken the law in that point. 36 H. 6. 57, 58. 21 Ed. 3. 17.

So if land deſcend to the eldeſt ſon of a perſon attainted from his anceſtor of the part of the mother held in knights ſervice, the guardian ſhall enter, and ouſt the father, becauſe the law giveth the father that prerogative in reſpect he is his ſon and heir; for of a daughter or a ſpecial heir in tail he ſhall not have it: but if the ſon be attainted, and the father covenant in conſideration of natural love to ſtand ſeiſed of land to his uſe, this is good enough to raiſe an uſe, becauſe the privity of a natural affection remaineth. F. N. Br. fo. 143.

So if a man be attainted and have a charter of pardon, and be returned of a jury between his ſon and *I. S.* the challenge remaineth; for he may maintain any ſuit of his ſon, notwithſtanding the blood be corrupted.

So by the ſtatute of 21 *H.* VIII. the ordinary ought to commit the adminiſtration of his goods that was attainted and purchaſed his charter of pardon, to his children, though born before the pardon, for it is no queſtion of his inheritance: for if one brother of the half blood die, the adminiſtration ought to be committed to his other brother of the half blood, if there be no nearer by the father. 5 Ed. 6. Adm. 47.

So if the uncle by the mother be attainted, and pardoned, and land deſcend from the father to the ſon within age held in ſocage, the uncle ſhall be guardian in ſocage; for that ſavoureth ſo little of the privity of heir, as the poſſibility to inherit ſhutteth out. 33 H. 6. 55.

But if a feme tenant in tail aſſent to the raviſher, and have no iſſue, and her conſin is attainted, and pardoned, and purchaſeth the reverſion, he ſhall not enter for a forfeiture. For though the law giveth it not in point of inheritance, but only as a perquiſite to any of the blood, ſo he be next in eſtate; yet the recompence is underſtood for the ſtain of his blood, which cannot be conſidered when it is once wholly corrupted before. 5 Ed. 4. 5.

So if a villain be attainted, yet the lord ſhall have the iſſues of his villain born before or after the attainder; for the lord hath them *jure naturae* but as the increaſe of a flock.

QUAERE, whether if the eldeſt ſon be attainted and pardoned, the lord ſhall have aid of his tenants to make him a knight, and it ſeemeth he ſhall; for the words of the writ hath *filium primogenitum*, and not *filium & haeredem*, and the like writ he hath *pur file marrier* who is no heir. F. N. Br. Regiſter fol. 87.

Reg. 12. *Receditur a placitis juris, potius quam injuriae & delicta maneant impunita.*

The law hath many grounds and poſitive learnings, which are not of the maxims and concluſions of reaſon; but yet are learnings received which the law hath ſet down and will not have called in queſtion: theſe may be rather called *placita juris* than *regulae juris*; with ſuch maxims the law will diſpenſe, rather than crimes and wrongs ſhould be unpuniſhed, *quia ſalus populi ſu-*

prema lex; and *ſalus populi* is contained in the repreſſing offences by puniſhment.

THEREFORE if an advowſon be granted to two, and the heirs of one of them, and an uſurpation be had, they both ſhall join in a writ of right of advowſon; and yet it is a ground in law, that a writ of right lieth of no leſs eſtate than a fee-ſimple; but becauſe the tenant for life hath no other ſeveral action in the law given him, and alſo that the jointure is not broken, and ſo the tenant in fee-ſimple cannot bring his writ of right alone; therefore rather than he ſhould be deprived wholly of remedy, and this wrong unpuniſhed, he ſhall join his companion with him, notwithſtanding the feebleneſs of his eſtate.

45 Ed. 3. 21. BUT if lands be given to two, and to the heirs of one of them, and they loſe in a *præcipe* by default, now they ſhall not join in a writ of right, becauſe the tenant for life hath a ſeveral action, *viz.* a *Quod ei deforciat*, in which reſpect the jointure is broken.

SO if tenant for life and his leſſor join in a leaſe for years, and the leſſee commit waſte, they ſhall join in puniſhing this waſte, and *locus vaſtatus* ſhall go to the tenant for life, and the damages to him in reverſion; and yet an action of waſte lieth not for tenant for life; but becauſe he in the reverſion cannot have it alone, becauſe of the mean eſtate for life, therefore rather than the waſte ſhall be unpuniſhed, they ſhall join.

45 Ed. 3. 3. 22 H. 6. 24. SO if two coparceners be, and they leaſe the land, and one of them die, and hath iſſue, and the leſſee commit waſte, the aunt and the iſſue ſhall join in puniſhing this waſte, and the iſſue ſhall recover the moiety of the place waſted, and the aunt the other moiety and the entire damages; and yet *actio injuriarum moritur cum perſona*, but *in favorabilibus magis attenditur quod prodeſt, quam quod nocet.*

20 Ed. 2. Fitz. deſcent. 16. SO if a man recovers by erroneous judgment, and hath iſſue two daughters, and one of them is attainted, the writ of error ſhall be brought againſt the parceners, notwithſtanding the privity fail in the one.

33 Eliz. ALSO it is a poſitive ground, that the acceſſary in felony cannot be proceeded againſt, until the principal be tried; yet if a man upon ſubtlety and malice ſet a madman by ſome device to kill, and he doth ſo; now foraſmuch as the madman is excuſed becauſe he can have no will nor malice, the law accounteth the inciter as principal, though he be abſent, rather than the crime ſhall go unpuniſhed.

Fitz Corone 459. M. 28 H. 6. Staundf. lib. 2. fo. 59. SO it is a ground of the law, that the appeal of murder goeth not to the heir where the party murdered hath a wife, nor to the younger brother where there is an elder; yet if the wife murder her huſband, becauſe ſhe is the party offender, the appeal leaps over to the heir; and ſo if the ſon and heir murder his father, it goeth to the ſecond brother.

BUT if the rule be one of the higher ſort of maxims that are *regulæ rationales*, and not *poſitivæ*, then the law will rather endure a particular offence to eſcape without puniſhment, than violate ſuch a rule.

AS it is a rule that penal ſtatutes ſhall not be taken by equity, and the ſtatute of 1 *Ed.* VI. enacts that thoſe that are attainted for ſtealing of horſes ſhall not have their clergy, the judges conceived, that this did not extend to him that ſhould ſteal but one horſe, and therefore procured a new act for it in 2 *Ed.* VI. *cap.* 33. And they had reaſon for it, as I take the law; for it is not like the caſe upon the ſtatute of *Gloceſt.* that gives the action of waſte againſt him that holds *pro termino vitæ vel annorum.* It is true, that if a man holds but for a year he is within the ſtatute; for it is to be noted, that penal ſtatutes are

Plow. 467. Lit. cap. 67. 46 Ed. 3. 31.

taken ſtrictly and literally only in the point of defining and ſetting down the fact and the puniſhment, and in thoſe clauſes that do concern them; and not generally in words that are but circumſtances and conveyance in the putting of the caſe: and ſo ſee the diverſity, for if the law be, that for ſuch an offence a man ſhall loſe his right hand, and the offender hath had his right hand before cut off in the wars, he ſhall not loſe his left hand, but the crime ſhall rather paſs without the puniſhment which the law aſſigned, than the letter of the law ſhould be extended; but if the ſtatute of 1 *Ed.* VI. had been, that he that ſhould ſteal one horſe ſhould be ouſted of his clergy, then there had been no queſtion at all, but if a man had ſtolen more horſes than one, but that he had been within the ſtatute, *quia omne majus continet in ſe minus.*

Reg. 13. *Non accipi debent verba in demonſtrationem falſam, quae competunt in limitationem veram.*

THOUGH falſity of addition or demonſtration doth not hurt where you give the thing a proper name, yet nevertheleſs if it ſtand doubtful upon the words, whether they import a falſe reference and demonſtration, or whether they be words of reſtraint that limit the generality of the former name, the law will never intend error or falſhood.

THEREFORE if the pariſh of *Hurſt* do extend into the counties of *Wiltſh.* and *Berkſh.* and I grant my cloſe called *Callis*, ſituate and lying in the pariſh of *Hurſt* in the county of *Wiltſh.* and the truth is, that the whole cloſe lieth in the county of *Berkſh.* yet the law is, that it paſſeth well enough, becauſe there is a certainty ſufficient in that I have given it a proper name which the falſe reference doth not deſtroy, and not upon the reaſon that theſe words, in the county of *Wiltſh.* ſhall be taken to go to the pariſh only, and ſo be true in ſome ſort, and not to the cloſe, and ſo to be falſe: For if I had granted *omnes terras meas in parochia de Hurſt in com. Wiltſh.* and I had no lands in *Wiltſh.* but in *Berkſh.* nothing had paſt. 12 Eliz. 6. 291. 23 Eliz. Dyer 376. 7 Ed. 6. Dy. 56.

BUT in the principal caſe, if the cloſe called *Callis* had extended part into *Wiltſh.* and part into *Berkſh.* then only that part had paſſed which lay in *Wiltſh.* 9 Ed. 4. 7. 21 Ed. 3. 18. 18 Eliz.

SO if I grant *omnes & ſingulas terras meas in tenura I. D. quas perquiſivi de I. N. in indentura dimiſſionis fact' I. B. ſpecificat.* If I have land wherein ſome of theſe references are true, and the reſt falſe, and no land wherein they are all true, nothing paſſeth: as if I have land in the tenure of *I. D.* and purchaſed of *I. N.* but not ſpecified in the indenture to *I. B.* or if I have land which I purchaſed of *I. N.* and ſpecified in the indenture of demiſe to *I. B.* and not in the tenure of *I. D.* 29 Reg.

BUT if I have ſome land wherein all theſe demonſtrations are true, and ſome wherein part of them are true, and part falſe, then ſhall they be intended words of true limitation to paſs only thoſe lands wherein all thoſe circumſtances are true.

Reg. 14. *Licet diſpoſitio de intereſſe futuro ſit inutilis, tamen poteſt fieri declaratio praecedens quae ſortiatur effectum interveniente novo actu.*

THE law doth not allow of grants except there be a foundation of an intereſt in the grantor; for the law that will not accept of grants of titles, or of things in action which are imperfect intereſts, much leſs will it allow

a man to grant or incumber that which is no intereſt at all, but merely future.

But of declarations precedent before any intereſt veſted the law doth allow, but with this difference, ſo that there be ſome new act or conveyance to give life and vigour to the declaration precedent.

Now the beſt rule of diſtinction between grants and declarations is, that grants are never countermandable, not in reſpect of the nature of the conveyance or inſtrument, though ſometime in reſpect of the intereſt granted they are, whereas declarations evermore are countermandable in their natures.

And therefore if I grant unto you, that if you enter into an obligation to me of 100 *l.* and after do procure me ſuch a leaſe, that then the ſame obligation ſhall be void, and you enter into ſuch an obligation unto me, and afterwards do procure ſuch a leaſe, yet the obligation is ſimple, becauſe the defeiſance was made of that which was not.

20 Eliz. 19 H. 6. 62.

So if I grant unto you a rent charge out of white acre, and that it ſhall be lawful for you to diſtrain in all my other lands whereof I am now ſeiſed, and which I ſhall hereafter purchaſe; although this be but a liberty of diſtreſs, and no rent ſave only out of white acre, yet as to the lands afterwards to be purchaſed the clauſe is void.

27 Ed. 3.

So if a reverſion be granted to *I. S.* and *I. D.* a ſtranger by his deed do grant to *I. S.* that if he purchaſe the particular eſtate, he will atturn to the grant, this is a void atturnment, notwithſtanding he doth afterwards purchaſe the particular eſtate.

29 Ed. 3. 6. 24 Eliz.

But of declarations the law is contrary; as if the diſſeiſee make a charter of feoffment to *I. S.* and a letter of attorney to enter and make livery and ſeiſin, and deliver the deed of feoffment, and afterwards livery and ſeiſin is made accordingly, this is a good feoffment; and yet he had no other thing than a right at the time of the delivery of the charter; but becauſe a deed of feoffment is but matter of declaration and evidence, and there is a new act which is the livery ſubſequent, therefore it is good in law.

13, 14 Eliz. 20, 21 Eliz. 25 Eliz. M. 38 & 39 Eliz.

So if a man make a feoffment to *I. S.* upon condition to enfeoff *I. N.* within certain days, and there are deeds made both of the firſt feoffment and the ſecond, and letters of attorney accordingly, and both thoſe deeds of feoffment, and letters of attorney are delivered at a time, ſo that the ſecond deed of feoffment and letters of attorney are delivered when the firſt feoffee had nothing in the land; and yet if both liveries be made accordingly, all is good.

36 Eliz.

So if I covenant with *I. S.* by indenture, that before ſuch a day I will purchaſe the manor of *D.* and before the ſame day I will levy a fine of the ſame land, and that the ſame fine ſhall be to certain uſes which I expreſs in the ſame indenture; this indenture to lead uſes being but matter of declaration and countermandable at my pleaſure, will ſuffice, though the land be purchaſed after; becauſe there is a new act to be done, *viz.* the fine.

But if there were no new act, then otherwiſe it is; as if I covenant with my ſon in conſideration of natural love, to ſtand ſeiſed unto his uſe of the lands which I ſhall afterwards purchaſe, yet the uſe is void; and the reaſon is, becauſe there is no new act, nor tranſmutation of poſſeſſion following to perfect this inception; for the uſe muſt be limited by the feoffor, and not the feoffee, and he had nothing at the time of the covenant.

25 Eliz. 27 Eliz.

So if I deviſe the manor of *D.* by ſpecial name, of which at that time I am not ſeiſed, and after I purchaſe it, except I make ſome new publication of

Com Plowd. Rigden's caſe.

of my will, this deviſe is void; and the reaſon is, becauſe that my death, which is the conſummation of my will, is the act of God, and not my act, and therefore no ſuch new act as the law requireth.

But if I grant unto *I. S.* authority by my deed to demiſe for years, the land whereof I am now ſeiſed, or hereafter ſhall be ſeiſed; and after I purchaſe the lands, and *I. S.* my attorney doth demiſe them; this is a good demiſe, becauſe the demiſe of my attorney is a new act, and all one with a demiſe by my ſelf.

But if I mortgage land, and after covenant with *I. S.* in conſideration of money which I receive of him, that after I have entred for the condition broken, I will ſtand ſeiſed to the uſe of the ſame *I. S.* and I enter, and this deed is enrolled, and all within the ſix months, yet nothing paſſeth away, becauſe this enrollment is no new act, but a perfective ceremony of the firſt deed of bargain and ſale; and the law is more ſtrong in that caſe, becauſe of the vehement relation which the enrolment hath to the time of the bargain and ſale, at what time he had nothing but a naked condition. 21 Eliz.

So if two jointenants be, and one of them bargain and ſell the whole land, and before the enrolment his companion dieth, nothing paſſeth of the moiety accrued unto him by ſurvivor. 6 Ed. 6. Br.

Reg. 15. *In criminalibus ſufficit generalis malitia intentionis cum facto paris gradus.*

All crimes have their conception in a corrupt intent, and have their conſummation and iſſuing in ſome particular fact; which though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of the error, if another particular enſue of as high a nature.

Therefore if an impoiſoned apple be laid in a place to impoiſon *I. S.* and *I. D.* cometh by chance and eateth it, this is murder in the principal that is actor, and yet the malice *in individuo* was not againſt *I. D.* 18 Eliz. Sanders caſe, Pl. com. 474.

So if a thief find the door open, and come in by night and rob an houſe, and be taken with the mainour, and break a door to eſcape, this is burglary; yet the breaking of the door was without any felonious intent, but it is one entire act. Cr. Juſt. 30.

So if a caliver be diſcharged with a murderous intent at *I. S.* and the piece break and ſtrike into the eye of him that diſchargeth it, and killeth him, he is *felo de ſe*, and yet his intention was not to hurt himſelf; for *felonia de ſe* and murder are *crimina paris gradus*. For if a man perſuade another to kill himſelf, and be preſent when he doth ſo, he is a murderer.

But *quaere*, if *I. S.* lay impoiſoned fruit for ſome other ſtranger his enemy, and his father or maſter come and eat it, whether this be petty treaſon, becauſe it is not altogether *crimen paris gradus*. Cr. Juſt. fol. 18, 19.

Reg. 16. *Mandata licita recipiunt ſtrictam interpretationem, ſed illicita latam & extenſam.*

In committing of lawful authority to another, a man may limit it as ſtrictly as it pleaſeth him, and if the party authorized do tranſgreſs his authority, though it be but in circumſtance expreſſed, it ſhall be void in the whole act.

But when a man is author and mover to another to commit an unlawful act, then he ſhall not excuſe himſelf by circumſtances not purſued.

10 H. 7. 19. 15, 16. 16El.Dy.337. THEREFORE if I make a letter of attorney to *I. S.* to deliver livery and ſeiſin in the capital meſſuage, and he doth it in another place of the land, or between the hours of two and three, and he doth it after or before; or if 16El.Dy.337. I make a charter of feoffment to *I. D.* and *I. B.* and expreſs the ſeiſin to be 11El.Dy.283. 38H.8.D.68. delivered to *I. D.* and my attorney deliver it to *I. B.* in all theſe caſes the act of the attorney, as to execute the eſtate, is void; but if I ſay generally to *I. D.* whom I mean only to enfeoff, and my attorney make it to his attorney, it ſhall be intended, for it is a livery to him in law.

18El. Sanders caſe. Com. 475. BUT on the other ſide, if a man command *I. S.* to rob *I. D.* on *Shooters-hill*, and he doth it on *Gads-hill*, or to rob him ſuch a day, and he doth it the next day, or to kill *I. D.* and he doth it not himſelf but procureth *I. B.* to do it; or to kill him by poiſon, and he doth it by violence; in all theſe caſes, notwithſtanding the fact be not executed in circumſtance, yet he is acceſſary nevertheleſs.

Ibidem. BUT if it be to kill *I. S.* and he killeth *I. D.* miſtaking him for *I. S.* then the acts are diſtant in ſubſtance, and he is not acceſſary.

AND be it that the facts be of differing degrees, and yet of a kind:

AS if a man bid *I. S.* to pilfer away ſuch things out of a houſe, and preciſely reſtrain him to do it ſometime when he is gotten in without breaking of the houſe, and yet he breaketh the houſe; yet he is acceſſary to the burglary: for a man cannot condition with an unlawful act, but he muſt at his peril take heed how he putteth himſelf into another man's hands.

18 Eliz. in Sanders caſe pl.Com.475. BUT if a man bid one rob *I. S.* as he goeth to *Sturbridge-fair*, and he rob him in his houſe, the variance ſeems to be of ſubſtance, and he is not acceſſary.

Reg. 17. *De fide & officio Judicis non recipitur quaeſtio; ſed de ſcientia, ſive error ſit juris ſive facti.*

THE law doth ſo much reſpect the certainty of judgments, and the credit and authority of judges, as it will not permit any error to be aſſigned that impeacheth them in their truſt and office, and in wilful abuſe of the ſame; but only in ignorance, and miſtaking either of the law or of the caſe and matter in fact.

F.N.br.fo.21. 7 H. 7. 4. AND therefore if I will aſſign for error, that whereas the verdict paſſed for me, the court received it contrary, and ſo gave judgment againſt me, this ſhall not be accepted.

3 H. 6. Aſſ. 3. SO if I will allege for error, that whereas *I. S.* offered to plead a ſufficient bar, the court refuſed it, and drove me from it, this error ſhall not be allowed.

2M Dy.114. BUT the greateſt doubt is where the court doth determine of the verity of the matter in fact; ſo that it is rather a point of trial than a point of judgment, whether it ſhall be re-examined in error.

1 Mar. 5. 28Aſſ.pl.15. 21H.7.40.35 AS if an appeal of maim be brought, and the court, by the aſſiſtance of the chirurgeons adjudge it to be a maim, whether the party grieved may bring a writ of error; and I hold the law to be he cannot.

8 H. 4. 3. SO if one of the Prothonotaries of the common pleas bring an aſſize of his office, and allege fees belonging to the ſame office in certainty, and iſſue is 1 Mar.Dy.89. 5 Mar. Dy. 163. taken upon theſe fees, this iſſue ſhall be tried by the judges by way of examination, and if they determine it for the plaintiff, and he have judgment to recover arrearages accordingly, the defendant can bring no writ of error of this judgment, though the fees in truth be other.

So if a woman bring a writ of dower, and the tenant plead her huſband is alive, this ſhall be tried by proofs and not by jury; and upon judgment given on either ſide no error lies. 8 H. 6. 23. 2 El. 285. Dy. 43 Aſſ. 26. 41 Aſſ 5.

So if *nul tiel record* be pleaded, which is to be tried by the inſpection of the record, and judgment be thereupon given, no error lieth. 39 Aſſ. 9. 5 Ed. 4. 3. 9 H. 7. 2.

So if in the aſſize the tenant ſaith, he is *counte de Dale & nient noſme counte*, in the writ, this ſhall be tried by the records of the chancery, and upon judgment given no error lieth. 19 H. 6. 52. 22 Aſſ. pl. 24. 19 Ed. 4. 6.

So if a felon demand his clergy, and read well and diſtinctly, and the court who is judge thereof do put him from his clergy wrongfully, error ſhall never be brought upon the attainder.

So if upon judgment given upon confeſſion or default, the court do aſſeſs damages, the defendant ſhall never bring a writ of error; though the damage be outragious. 9 Aſſ. 8. F. N. Br. 21.

And it ſeemeth in the caſe of maim, and ſome other caſes; that the court may diſmiſs themſelves of diſcuſſing the matter by examination, and put it to a jury, and then the party grieved ſhall have his attaint; and therefore it ſeemeth that the court that doth deprive a man of his action, ſhould be ſubject to an action; but that notwithſtanding the law will not have, (as was ſaid in the beginning,) the judges called in queſtion in the point of their office when they undertake to diſcuſs the iſſue; and that is the true reaſon: for to ſay that the reaſon of theſe caſes ſhould be, becauſe trial by the court ſhould be peremptory as trial by certificate, (as by the Biſhop in caſe of baſtardy, or by the marſhal of the King, *&c.*) the caſes are nothing alike; for the reaſon of thoſe caſes of certificate is, becauſe if the court ſhould not give credit to the certificate, but ſhould re-examine it, they have no other mean but to write again to the ſame Lord Biſhop, or the ſame Lord Marſhal, which were frivolous, becauſe it is not to be preſumed they would differ from their former certificate; whereas in theſe other caſes of error the matter is drawn before a ſuperiour court, to re-examine the errors of an inferiour court; and therefore the true reaſon is, as was ſaid; that to examine again that which the court had tried, were in ſubſtance to attaint the court. 21 Aſſ. 24. 11 H. 4. 41. 7 H. 6. 37.

And therefore this is a certain rule in error; that error in law is ever of ſuch matters as do appear upon record; and error in fact is ever of ſuch matters as are not croſſed by the record; as to allege the death of the tenant at the time of the judgment given, nothing appeareth upon record to the contrary.

So when the infant levies a fine, it appeareth not upon the record that he is an infant, therefore it is an error in fact, and ſhall be tried by inſpection during nonage. F. N. Br. 21.

But if a writ of error be brought in the King's bench of a fine levied by an infant, and the court by inſpection and examination doth affirm the fine, the infant, though it be during his infancy, ſhall never bring a writ of error in the parliament upon this judgment; not but that error lies after error, but becauſe it doth now appear upon the record that he is now of full age, therefore it can be no error in fact. And therefore if a man will aſſign for error that fact, that whereas the judges gave judgment for him, the clerks entred it in the roll againſt him, this error ſhall not be allowed; and yet it doth not touch the judges but the clerks: but the reaſon is, if it be an error, it is an error in fact; and you ſhall never allege an error in fact contrary to the record. 2 R. 3. 20. F. N. Br. 21. 9 Ed. 4. 3.

Reg.

Reg. 18. *Perſona conjuncta æquiparatur intereſſe proprio.*

THE law hath that reſpect of nature and conjunction of blood, as in divers caſes it compareth and matcheth nearneſs of blood with conſideration of profit and intereſt; yea, and in ſome caſes alloweth of it more ſtrongly.

7 & 8 Eliz. THEREFORE if a man covenant in conſideration of blood, to ſtand ſeiſed to the uſe of his brother, or ſon, or near kinſman, an uſe is well raiſed of this covenant without tranſmutation of poſſeſſion; nevertheleſs it is true, that conſideration of blood is naught to ground a perſonal contract upon; as if I contract with my ſon, that in conſideration of blood I will give unto him ſuch a ſum of money, this is a *nudum pactum*, and no *aſſumpſit* lieth upon it; for to ſubject me to an action, there needeth a conſideration of benefit; but the uſe the law raiſeth without ſuit or action; and beſides, the law doth match real conſiderations with real agreements and covenants.

19 Ed. 4. 5. 19 Ed. 4. 22. 22 H. 6. 35. 21 H. 6. 15, 16. 22 H. 6. 5. 20 H. 6. 14 H. 6. 6. So if a ſuit be commenced againſt me, my ſon, or brother, I may maintain as well as he in remainder for his intereſt, or his lawyer for his fee; and if my brother have a ſuit againſt my nephew or couſin, yet it is at my election to maintain the cauſe of my nephew or couſin, though the adverſe party be nearer unto me in blood.

14 H. 7. 2. 14 & 15 Eliz. 21 Ed. 4. 75. Pl. com. 425. So in challenges of juries, challenge of blood is as good as challenge within diſtreſs, and it is not material how far off the kindred be, ſo the pedigree can be conveyed in a certainty, whether it be of the half blood or whole.

15 H. 6. 17. 39 H. 6. 50. 21 Ed. 4. 13. 18 H. 6. 21. 15 Ed. 4. 1. 39 H. 6. 91. 7 Ed. 4. 21. 20 Aſſ. 14. So if a man menace me, that he will impriſon or hurt in body my father, or my child, except I make ſuch an obligation, I ſhall avoid this dureſſe, as well as if the dureſſe had been to mine own perſon: and yet if a man menace me, by taking away or deſtruction of my goods, this is no good dureſſe to plead; and the reaſon is, becauſe the law can make me reparation of that loſs, and ſo it cannot of the other.

Perk. f. 4. So if a man under the years of twenty one, contract for the nurſing of his lawful child, this contract is good, and ſhall not be avoided by infancy, no more than if he had contracted for his own aliments or erudition.

Reg. 19. *Non impedit clauſula derogatoria, quo minus ab eadem poteſtate res diſſolvantur a quibus conſtituuntur.*

ACTS which are in their natures revocable, cannot by ſtrength of words be fixed or perpetuated; yet men have put in ure two means to bind themſelves from changing or diſſolving that which they have ſet down, whereof one is *clauſula derogatoria*, the other *interpoſitio juramenti*, whereof the former is only pertinent to the preſent purpoſe.

THIS *clauſula derogatoria* is by the common practical term called *clauſula non obſtante*, and is of two ſorts, *de præterito & de futuro*, the one weakening and diſannulling any matter paſt to the contrary, the other any matter to come, and this latter is that only whereof we ſpeak.

THE *clauſula non obſtante de futuro*, the law judgeth to be idle and of no force, becauſe it doth deprive men of that which of all other things is moſt incident to human condition, and that is alteration or repentance.

THEREFORE if I make my will, and in the end thereof do add ſuch like clauſe, [Alſo my will is if I ſhall revoke this preſent will, or declare any new will, except the ſame ſhall be in writing, ſubſcribed with the hands of two witneſſes,

witneſſes, that ſuch revocation or new declaration ſhall be utterly void, and by theſe preſents I do declare the ſame not to be my will, but this my former will to ſtand, any ſuch pretended will to the contrary notwithſtanding] yet nevertheleſs this clauſe or any the like never ſo exactly penned; and although it do reſtrain the revocation but in circumſtance and not altogether, is of no force or efficacy to fortify the former will againſt the ſecond; but I may by paroll without writing repeal the ſame will and make a new one.

So if there be a ſtatute made that no ſheriff ſhall continue in his office above a year, and if any patent be made to the contrary it ſhall be void; and if there be any *clauſula de non obſtante* contained in ſuch patent to diſpenſe with this preſent act, that ſuch clauſe alſo ſhall be void; yet nevertheleſs a patent of the ſheriff's office made by the King for term of life, with a *non obſtante*, will be good in law contrary to ſuch ſtatute, which pretendeth to exclude *non obſtante's*; and the reaſon is, becauſe it is an inſeparable prerogative of the crown to diſpenſe with politick ſtatutes, and of that kind; and then the derogatory clauſe hurteth not. 28 Ed. 3. cap. 7. 24 Ed. 3. cap. 9. 2 H. 7. 6.

So if an act of parliament be made wherein there is a clauſe contained, that it ſhall not be lawful for the King by authority of parliament, during the ſpace of ſeven years, to repeal and determine the ſame act, this is a void clauſe, and ſuch act may be repealed within the ſeven years; and yet if the parliament ſhould enact in the nature of the antient *lex regia*, that there ſhould be no more parliaments held, but that the King ſhould have the authority of the parliament; this act were good in law, *quia poteſtas ſuprema ſeipſum diſſolvere poteſt, ligare non poteſt:* for as it is in the power of a man to kill a man, but it is not in his power to ſave him alive, and to reſtrain him from breathing or feeling; ſo it is in the power of a parliament to extinguiſh or transfer their own authority, but not whilſt the authority remains entire, to reſtrain the functions and exerciſes of the ſame authority.

So in 28 of K. *H.* VIII. chap. 17. there was a ſtatute made, that all acts that paſſed in the minority of Kings, reckoning the ſame under the years of twenty four, might be annulled and revoked by their letters patent when they came to the ſame years; but this act in the firſt of K. *Ed.* VI. who was then between the years of ten and eleven, *cap.* 11. was repealed, and a new law ſurrogate in place thereof, wherein a more reaſonable liberty was given; and wherein, though other laws are made revocable according to the proviſion of the former law with ſome new form preſcribed, yet that very law of revocation, together with pardons, is made irrevocable and perpetual, ſo that there is a direct contrariety between theſe two laws; for if the former ſtands, which maketh all later laws during the minority of Kings revocable without exception of any law whatſoever, then that very law of repeal is concluded in the generality, and ſo it ſelf made revocable: on the other ſide, that law making no doubt of the abſolute repeal of the firſt law, though it ſelf were made during the minority, which was the very caſe of the former law in the new proviſion which it maketh, hath a preciſe exception, that the law of repeal ſhall not be repealed. 14 El. Dy. 313. Pl. Com. 563.

But the law is, that the firſt law by the impertinency of it was void *ab initio & ipſo facto* without repeal, as if a law were made, that no new ſtatute ſhould be made during ſeven years, and the ſame ſtatute be repealed within the ſeven years, if the firſt ſtatute ſhould be good, then no repeal could be made thereof within that time; for the law of repeal were a new law, and that were diſabled by the former law; therefore it is void in it ſelf, and

the rule holds, *perpetua lex eſt, nullam legem humanam ac poſitivam perpetuam eſſe; & clauſula quae abrogationem excludit initio non valet.*

NEITHER is the difference of the civil law ſo reaſonable as colourable, for they diſtinguiſh and ſay that a derogatory clauſe is good to diſable any later act, except you revoke the ſame clauſe before you proceed to eſtabliſh any later diſpoſition or declaration; for they ſay, that *clauſula derogatoria ad alias ſequentes voluntates poſita in teſtamento (viz. ſi teſtator dicat qd' ſi contigerit eum facere aliud teſtamentum non vult illud valere) operatur quod ſequens diſpoſitio ab ipſa clauſula reguletur, & per conſequens quod ſequens diſpoſitio ducatur ſine voluntate, & ſic quod non ſit attendendum.* The ſenſe is, that where a former will is made, and after a later will, the reaſon why without an expreſs revocation of the former will it is by implication revoked, is becauſe of the repugnancy between the diſpoſition of the former and the later.

BUT where there is ſuch a derogatory clauſe, there can be gathered no ſuch repugnancy; becauſe it ſeemeth that the teſtator had a purpoſe at the making of the firſt will to make ſome ſhew of a new will, which nevertheleſs his intention was ſhould not take place: but this was anſwered before; for if that clauſe were allowed to be good until a revocation, then could no revocation at all be made, therefore it muſt needs be void by operation of law at firſt. Thus much of *clauſula derogatoria.*

Reg. 20. *Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari poteſt; ſi autem pendet ex voluntate tertiae perſonae, vel ex contingenti, revocari non poteſt.*

IN acts that are fully executed and conſummate, the law makes this difference, that if the firſt parties have put it in the power of a third perſon, or of a contingency, to give a perfection to their acts, then they have put it out of their own reach and liberty; therefore there is no reaſon they ſhould revoke them: but if the conſummation depend upon the ſame conſent, which was the inception, then the law accounteth it in vain to reſtrain them from revoking of it; for as they may fruſtrate it by omiſſion and *non feiſance*, at a certain time, or in a certain ſort or circumſtance, ſo the law permitteth them to diſſolve it by an expreſs conſent before that time, or without that circumſtance.

THEREFORE if two exchange land by deed, or without deed, and neither enter, they may make a revocation or diſſolution of the ſame exchange by mutual conſent, ſo it be by deed, but not by paroll; for as much as the making of an exchange needeth no deed, becauſe it is to be perfected by entry, which is a ceremony notorious in the nature of a livery; but it cannot be diſſolved but by deed, becauſe it diſchargeth that which is but title.

F. N. Br. 36. 13H.7.13,14.

SO if I contract with *I. D.* that if he lay me into my cellar three tuns of wine before *Mich.* that I will bring into his garner twenty quarters of wheat before *Chriſtmas*, before either of theſe days the parties may by aſſent diſſolve the contract; but after the firſt day there is a perfection given to the contract by action on the one ſide, and they may make croſs releaſes by deed or paroll, but never diſſolve the contract; for there is a difference between diſſolving the contract, and releaſe or ſurrender of the thing contracted for: as if leſſee for twenty years make a leaſe for ten years, and after he take a new leaſe for five years, yet this cannot inure by way of ſurrender: for a petty leaſe

E. 36 Eliz.

derived out of a greater cannot be ſurrendered back again, but inureth only by diſſolution of contract; for a leaſe of land is but a contract executory from time to time of the profits of the land, to ariſe as a man may ſell his corn or his tythe to ſpring or to be perceived for divers future years.

But to return from our digreſſion: on the other ſide, if I contract with you for cloth at ſuch a price as *I. S.* ſhall name; there if *I. S.* refuſe to name, the contract is void; but the parties cannot diſcharge it, becauſe they have put it in the power of the third perſon to perfect.

So if I grant my reverſion, though this be an imperfect act before atturnment; yet becauſe the atturnment is the act of a ſtranger, this is not ſimply revocable, but by a policy or circumſtance in law, as by levying a fine, or making a bargain and ſale, or the like. 11 H. 7. 10. 1 R. 2. F. atturnmēt. 8.

So if I preſent a clerk to the Biſhop, now can I not revoke this preſentation, becauſe I have put it out of my ſelf, that is, in the Biſhop, by admiſſion; to perfect my act begun. 31 Ed. 1. Fitz. Q. Imp. 185. 14 Ed. 4. 2. 38 Ed. 3. 35.

The ſame difference appeareth in nominations and elections; as if I enfeoff *I. S.* upon condition to enfeoff ſuch a one as *I. D.* ſhall name within a year, and *I. D.* name *I. B.* yet before the feoffment, and within the year, *I. D.* may countermand his nomination and name again, becauſe no intereſt paſſeth out of him. But if I enfeoff *I. S.* to the uſe of ſuch a one as *I. D.* ſhall name within a year, then if *I. D.* name *I. B.* it is not revocable, becauſe the uſe paſſeth preſently by operation of law. 14 Ed. 4. 2.

So in judicial acts the rule of the civil law holdeth, *ſententia interlocutoria revocari poteſt, definitiva non poteſt*; that is, that an order may be revoked, but a judgment cannot; and the reaſon is, becauſe there is a title of execution or bar given preſently unto the party upon judgment, and ſo it is out of the judge to revoke, in courts ordered by the common law.

Reg. 21. *Clauſula vel diſpoſitio inutilis per præſumptionem vel cauſam remotam, ex poſt facto non fulcitur.*

CLAUSULA vel diſpoſitio inutilis are ſaid, when the act or the words do work or expreſs no more than the law by intendment would have ſupplied; and therefore the doubling or iterating of that and no more, which the conceit of the law doth in a ſort prevent and preoccupate, is reputed nugation, and is not ſupported and made of ſubſtance either by a foreign intendment of ſome purpoſe, in regard whereof it might be material, nor upon any cauſe emerging afterwards, which may induce an operation of thoſe idle words or acts

And therefore if a man deviſe land at this day to his ſon and heir, this is a void deviſe, becauſe the diſpoſition of law did caſt the ſame upon the heir by deſcent; and yet if it be knight's-ſervice land, and the heir within age, if he take by the deviſe, he ſhall have two parts of the profits to his own uſe, and the guardian ſhall have benefit but of the third; but if a man deviſe land to his two daughters, having no ſons, then the deviſe is good, becauſe he doth alter the diſpoſition of law; for by the law they ſhall take in copercenary, but by the deviſe they ſhall take jointly; and this is not any foreign collateral purpoſe, but in point of taking of eſtate. 32 H. 8. 2 M. 1. Br. deviſes 41. 29 H. 8. Dy. 12.

So if a man make a feoffment in fee, to the uſe of his laſt will and teſtament, theſe words of ſpecial limitation are void, and the law reſerveth the antient uſe to the feoffor and his heirs; and yet if the words might ſtand, then might it be authority by his will to declare and appoint uſes, and then though

though it were knight's-ſervice land, he might diſpoſe the whole. As if a man make a feoffment in fee, to the uſe of the will and teſtament of a ſtranger, there the ſtranger may declare an uſe of the whole by his will, notwithſtanding it be knight's-ſervice land; but the reaſon of the principal caſe is, becauſe uſes before the ſtatute of 27 *H.* VIII. were to have been diſpoſed by will, and therefore before that ſtatute an uſe limited in the form aforeſaid, was but a frivolous limitation, in regard of the old uſe that the law reſerved was deviſeable; and
19 H. 8. 11. the ſtatute of 27 *H* VIII. altereth not the law, as to the creating and limiting of
5 Ed. 4. 8. any uſe, and therefore after that ſtatute, and before the ſtatute of wills, when no lands could have been deviſed, yet it was a void limitation as before, and ſo continueth to this day.

But if I make a feoffment in fee, to the uſe of my laſt will and teſtament, thereby to declare an eſtate tail and no greater eſtate, and after my death, and after ſuch eſtate declared ſhall expire, or in default of ſuch declaration
19 H. 8. 11. then to the uſe of *I. S.* and his heirs, this is a good limitation; and I may by
6 Ed. 4. 8. my will declare an uſe of the whole land to a ſtranger, though it be held in knight's-ſervice, and yet I have an eſtate in fee ſimple by virtue of the old uſe during life.

So if I make a feoffment in fee to the uſe of my right heirs, this is a
32 H. 8. 43. Dy. void limitation, and the uſe reſerved by the law doth take place; and yet if
20 H. 8. 8. Dy. the limitation ſhould be good the heir ſhould come in by way of purchaſe,
7 El. 237. Dy. who otherwiſe cometh in by deſcent; but this is but a circumſtance which the law reſpecteth not, as was proved before.

But if I make a feoffment in fee to the uſe of my right heirs, and the
10 El. 274. Dy right heirs of *I. S.* this is a good uſe, becauſe I have altered the diſpoſition of law; neither is it void for a moiety, but both our right heirs when they come in being ſhall take by joint purchaſe; and he to whom the firſt
2 Ed. 3. 29. 30 E. 3. Fitz. falleth ſhall take the whole, ſubject nevertheleſs to his companions title,
Deviſe. 9. ſo it have not deſcended from the firſt heir to the heir of the heir: for a man cannot be joint-tenant claiming by purchaſe, and the other by deſcent, becauſe they be ſeveral titles.

So if a man having land on the part of his mother make a feoffment in fee to the uſe of himſelf and his heirs, this uſe, though expreſſed, ſhall not
4 M. 133. pl. 6. Dyer. go to him and the heirs of the part of his father as a new purchaſe, no more than it ſhould have done if it had been a feoffment in fee nakedly without conſideration, for the intendment is remote. But if baron and feme be, and they join in a fine of the feme's land, and expreſs an uſe to the huſband and wife and their heirs: this limitation ſhall give a joint eſtate by entierties
5 Ed. 4. 8. to them both; becauſe the intendment of law would have conveyed the uſe
19 H. 8. 11. to the feme alone. And thus much touching foreign intendments.

For matter *ex poſt facto*, if a leaſe for life be made to two, and the ſurvivor of them, and they after make partition: now theſe words (and the ſurvivor of them) ſhould ſeem to carry purpoſe as a limitation, that either of them ſhould be ſtated in his part for both their lives ſeverally; but yet the law at the firſt conſtrueth the words but as words of dilating to deſcribe a joint
30 Aſſ 8. Fitz. eſtate; and if one of them die after partition, there ſhall be no occupant, but
part. 16. his part ſhall revert.
31 H. 8. 46. Pl. 7. Dy. So if a man grant a rent charge out of ten acres, and grant farther that the whole rent ſhall iſſue out of every acre, and diſtreſs accordingly, and afterwards the grantee purchaſe an acre: now this clauſe ſhould ſeem to be material to uphold the whole rent; but yet nevertheleſs the law at firſt accepteth of theſe words but as words of explanation, and then notwithſtanding the whole rent is extinct.

So

So if a gift in tail be made upon condition, that if tenant in tail die without iſſue, it ſhall be lawful for the donor to enter; and the donee diſcontinue and die without iſſue: now this condition ſhould ſeem material to give him benefit of entry, but becauſe it did at the firſt limit the eſtate according to the limitation of law, it worketh nothing upon this matter emergent afterward. 4 E. 6. Com. 33 per Hinde. 27 H. 8. 6.

So if a gift in tail be made of lands held in knight's-ſervice with an expreſs reſervation of the ſame ſervice, whereby the land is held over, and the gift is with warranty, and the land is evicted, and other land is recovered in value againſt the donor, held in ſocage, now the tenure which the law makes between the donor and donee ſhall be in ſocage, and not in knight's-ſervice; becauſe the firſt reſervation was according to the owelty of ſervice, which was no more than the law would have reſerved. 22. Aſſ. Pl. 52.

But if a gift in tail had been made of lands held in ſocage with a reſervation of knight's-ſervice tenure, and with warranty, then becauſe the intendment of law is altered, the new land ſhall be held by the ſame ſervice the loſt land was, without any regard at all to the tenure paramount: and thus much of matter *ex poſt facto*.

This rule faileth where that the law ſaith as much as the party, but upon foreign matter not pregnant and appearing upon the ſame act or conveyance, as if leſſee for life be, and he lets for twenty years, if he live ſo long; this limitation (if he live ſo long) is no more than the law ſaith, but it doth not appear upon the ſame conveyance or act, that this limitation is nugatory, but it is foreign matter in reſpect of the truth of the ſtate whence the leaſe is derived: and therefore if leſſee for life make a feoffment in fee, yet the ſtate of the leſſee for years is not enlarged againſt the feoffee, otherwiſe had it been if ſuch limitation had not been, but that it had been left only to the law.

So if tenant after poſſibility make a leaſe for years, and the donor confirms to the leſſee to hold without impeachment of waſte during the life of tenant in tail, this is no more than the law ſaith; but the privilege of tenant after poſſibility is foreign matter, as to the leaſe and confirmation: and therefore if tenant after poſſibility do ſurrender, yet the leſſee ſhall hold diſpuniſhable of waſte; otherwiſe had it been if no ſuch confirmation at all had been made. 16 H. 7. 4. per Keble. 24 Ed. 3. 28. Fitz.

Also heed muſt be given that it be indeed the ſame thing which the law intendeth, and which the party expreſſeth, and not only like or reſembling, and ſuch as may ſtand both together: for if I let land for life rendring a rent, and by my deed warrant the ſame land, this warranty in law and warranty in deed are not the ſame thing, but may both ſtand together. 18 Ed. 3. 31 E. 1. Fitz. Vouch. 7, 289.

There remaineth yet a great queſtion on this rule.

A principal reaſon whereupon this rule is built, ſhould ſeem to be becauſe ſuch acts or clauſes are thought to be but declaratory, and added upon ignorance of the law, and *ex conſuetudine clericorum* upon obſerving of a common form, and not upon purpoſe or meaning, and therefore whether by particular and preciſe words a man may not controul the intendment of the law.

To this I anſwer, that no preciſe or expreſs words will controul this intendment of law; but as the general words are void, becauſe they ſay contrary to that the law ſaith; ſo are they which are thought to be againſt the law: and therefore if I deviſe my land being knight's-ſervice tenure to my heir, and expreſs my intention to be, that the one part ſhould deſcend to him as the third part appointed by ſtatute, and the other he ſhall take by deviſe

to his own uſe, yet this is void; for the law ſaith, he is in by deſcent of the whole, and I ſay he ſhall be in by deviſe, which is againſt the Law.

1 it. pl. 364. But if I make a gift in tail, and ſay upon condition, that if tenant in tail diſcontinue and after die without iſſue, it ſhall be lawful for me to enter; this is a good clauſe to make a condition, becauſe it is but in one caſe, and doth not croſs the law generally: for if the tenant in tail in that caſe be diſſeiſed, and a deſcent caſt, and die without iſſue, I that am the donor ſhall not enter.

But if the clauſe had been provided, that if tenant in tail diſcontinue, or ſuffer a deſcent, or do any other act whatſoever, that after his death without iſſue it ſhall be lawful for me to enter: now this is a void condition, for it importeth a repugnancy to law; as if I would over-rule that where the law ſaith I am put to my action, I nevertheleſs will reſerve to my ſelf an entry.

Reg. 22. *Non videtur conſenſum retinuiſſe ſi quis ex praeſcripto minantis aliquid immutavit.*

Although choice and election be a badge of conſent, yet if the firſt ground of the act be dureſs, the law will not conſtrue that the dureſs doth determine, if the party dureſſed do make any motion or offer.

Therefore if a party menace me, except I make unto him a bond of 40 *l.* and I tell him that I will not do it, but I will make unto him a bond of 20 *l.* the law ſhall not expound this bond to be voluntary, but ſhall rather make conſtruction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulſion notwithſtanding into the leſſer.

But if I will draw any conſideration to my ſelf, as if I had ſaid, I will enter into your bond of 40 *l.* if you will deliver me that piece of plate, now the dureſs is diſcharged; and yet if it had been moved from the dureſſor, who had ſaid at the firſt, you ſhall take this piece of plate, and make me a bond of 40 *l.* now the gift of the plate had been good, and yet the bond ſhall be avoided by dureſs.

Reg. 23. *Ambiguitas verborum latens verificatione ſuppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur.*

There be two ſorts of ambiguities of words, the one is *ambiguitas patens*, and the other *latens*. *Patens* is that which appears to be ambiguous upon the deed or inſtrument: *latens* is that which ſeemeth certain and without ambiguity, for any thing that appeareth upon the deed or inſtrument; but there is ſome collateral matter out of the deed, that breedeth the ambiguity.

Ambiguitas patens is never holpen by averment, and the reaſon is, becauſe the law will not couple and mingle matter of ſpecialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow, and ſubject to averments, and ſo in effect, that to paſs without deed, which the law appointeth ſhall not paſs but by deed.

Therefore if a man give land to *I. D. & I. S. & haeredibus*, and do not limit to whether of their heirs, it ſhall not be ſupplied by averment to whether of them the intention was, the inheritance ſhould be limited.

So

So if a man give land in tail, though it be by will, the remainder in tail, and add a *proviſo* in this manner: Provided that if he, or they, or any of them do any, *&c.* according to the uſual clauſes of perpetuities, it cannot be averred upon the ambiguities of the reference of this clauſe, that the intent of the deviſor was, that the reſtraint ſhould go only to him in the remainder, and the heirs of his body; and that the tenant in tail in poſſeſſion was meant to be at large.

Of theſe infinite caſes might be put, for it holdeth generally that all ambiguity of words by matter within the deed, and not out of the deed, ſhall be holpen by conſtruction, or in ſome caſe by election, but never by averment, but rather ſhall make the deed void for uncertainty.

But if it be *ambiguitas latens*, then otherwiſe it is: as if I grant my manor of *S.* to *I. F.* and his heirs, here appeareth no ambiguity at all; but if the truth be, that I have the manors both of South *S.* and North *S.* this ambiguity is matter in fact; and therefore it ſhall be holpen by averment, whether of them was that the party intended ſhould paſs.

So if I ſet forth my land by quantity, then it ſhall be ſupplied by election, and not averment.

As if I grant ten acres of wood in ſale, where I have an hundred acres, whether I ſay it in my deed or no, that I grant out of my hundred acres, yet here ſhall be an election in the grantee, which ten he will take.

And the reaſon is plain, for the preſumption of the law is, where the thing is only nominated by quantity, that the parties had indifferent intentions which ſhould be taken, and there being no cauſe to help the uncertainty by intention, it ſhall be holpen by election.

But in the former caſe the difference holdeth, where it is expreſſed, and where not; for if I recite, Whereas I am ſeiſed of the manor of North *S.* and South *S.* I leaſe unto you *unum manerium de S.* there it is clearly an election. So if I recite, Where I have two tenements in St. *Dunſtan*'s, I leaſe unto you *unum tenementum*, there it is an election, not averment of intention, except the intent were of an election, which may be ſpecially averred.

Another ſort of *ambiguitas latens* is correlative unto theſe: for this ambiguity ſpoken of before, is when one name and appellation doth denominate divers things, and the ſecond, when the ſame thing is called by divers names.

As if I give lands to *Chriſt-Church* in *Oxford*, and the name of the corporation is *Eccleſia Chriſti in univerſitate Oxford*, this ſhall be holpen by averment, becauſe there appears no ambiguity in the words: for this variance is matter in fact, but the averment ſhall not be of intention, becauſe it doth ſtand with the words.

For in the caſe of equivocation the general intent includes both the ſpecial, and therefore ſtands with the words: but ſo it is not in variance, and therefore the averment muſt be of matter, that do endure quantity, and not intention.

As to ſay, of the precinct of *Oxford*, and of the univerſity of *Oxford*, is one and the ſame, and not to ſay that the intention of the parties was, that the grant ſhould be to *Chriſt-Church* in that univerſity of *Oxford*.

Reg. 24. *Licita bene miſcentur, formula niſi juris obſtet.*

The law giveth that favour to lawful acts, that although they be executed by ſeveral authorities, yet the whole act is good. As

As when tenant for life is, the remainder in fee, and they join in a livery by deed or without, this is one good entire livery drawn from them both, and doth not inure to a ſurrender of the particular eſtate, if it be without deed *, or confirmation of thoſe in the remainder, if it be by deed; but they are all parties to the livery.

So if tenant for life be, the remainder in fee, and they join in granting a rent, this is one ſolid rent out of both their eſtates, and no double rent, or rent by confirmation.

Quaere. So if tenant in tail be at this day, and he make a leaſe for three lives, and his own, this is a good leaſe, and warranted by the ſtatute of 32 *H.* VIII. and yet it is good in part by the authority which tenant in tail hath by the common law, that is, for his own life, and in part by the authority which he hath by the ſtatute, that is, for the other three lives.

So if a man ſeiſed of lands deviſeable by cuſtom, and of other land held in knight's-ſervice, deviſe all his lands, this is a good deviſe of all the land cuſtomary by the common law, and of two parts of the other land by the ſtatutes.

So in the ſtar-chamber a ſentence may be good, grounded in part upon the authority given the court by the ſtatute of 3 *H.* VII. and in part upon that antient authority which the court hath by the common law, and ſo upon ſeveral commiſſions.

But if there be any form which the law appointeth to be obſerved, which cannot agree with the diverſities of authorities, then this rule faileth.

As if three coparceners be, and one of them alien her purparty, the feoffee and one of the ſiſters cannot join in a writ *de part' facienda*, becauſe it behoveth the feoffee to mention the ſtatute in his writ.

Vide 1. Inſtit. 166. b.

Reg. 25. *Praeſentia corporis tollit errorem nominis, & veritas nominis tollit errorem demonſtrationis.*

There be three degrees of certainty.

1. Presence.
2. Name.
3. Demonstration or reference.

Whereof the preſence the law holdeth of greateſt dignity, the name in the ſecond degree, and the demonſtration or reference in the loweſt, and always the error or falſity in the leſs worthy.

And therefore if I give a horſe to *I. D.* being preſent, and ſay unto him, *I. S.* take this; this is a good gift, notwithſtanding I call him by a wrong name: but ſo had it not been if I had delivered him to a ſtranger to the uſe of *I. S.* where I meant *I. D.*

So if I ſay unto *I. S.* here I give you my ring with the ruby, and deliver it with my hand, and the ring bear a diamond and no ruby, this is a good gift notwithſtanding I name it amiſs.

So had it been if by word or writing, without the delivery of the thing it ſelf, I had given the ring with the ruby, although I had no ſuch, but only one with a diamond which I meant, yet it would have paſſed.

So if I by deed grant unto you by general words, all the lands that the King hath paſſed unto me by letters patents dated 10 *May*, unto this preſent

* Semble clerement le ley d'eſtre contrary in ambideux caſes, car lou eſt ſans fait, eſt livery ſolement de ceſtui in le rem' & furr' de partie' ten', autrement ſerra forfeiture de ſon eſtate, & lou eſt per fait, le livery paſſa ſolement de tenant, car il ad le franktenement, vide accordant Snr Co. l. 1. 79. b. 77. a. Plow. Com. 59. a. 140. 2 H. 5. 7. 13 H. 7. 14. 13 Ed. 4. 4. a. 27 H. 8. 13. M. 16. & 17. El. Dy. 339.

indenture annexed, and the patent annexed have date 10 *July*; yet if it be proved that that was the true patent annexed, the preſence of the patent maketh the error of the date recited not material; yet if no patent had been annexed, and there had been alſo no other certainty given, but the reference of the patent, the date whereof was miſ-recited, although I had no other patent ever of the King, yet nothing would have paſſed.

Like law is it, but more doubtful, where there is not a preſence, but a kind of repreſentation, which is leſs worthy than a preſence, and yet more worthy than a name or reference.

As if I covenant with my ward, that I will tender unto him no other marriage, than the gentlewoman whoſe picture I delivered him, and that picture hath about it *aetatis ſuae anno* 16. and the gentlewoman is ſeventeen years old; yet nevertheleſs if it can be proved that the picture was made for that gentlewoman, I may, notwithſtanding this miſtaking, tender her well enough.

So if I grant you for life a way over my land, according to a plot intended between us, and after I grant unto you and your heirs a way according to the firſt plot intended, whereof a table is annexed to theſe preſents, and there be ſome ſpecial variance between the table and the original plot, yet this repreſentation ſhall be certainty ſufficient to lead unto the firſt plot; and you ſhall have the way in fee nevertheleſs, according to the firſt plot, and not according to the table.

So if I grant unto you by general words the land which the King hath granted me by his letters patents, *quarum tenor ſequitur in haec verba, &c.* and there be ſome miſtaking in the recital and variance from the original patent, although it be in a point material; yet the repreſentation of this whole patent ſhall be as the annexing of the true patent, and the grant ſhall not be void by this variance.

Now for the ſecond part of this rule touching the name and the reference, for the explaining thereof, it muſt be noted what things found in demonſtration or addition: as firſt in lands, the greateſt certainty is, where the land hath a name proper, as the manor of *Dale*, *Grandfield*, &c. the next is equal to that, when the land is ſet forth by bounds and abuttals, as a cloſe of paſture bounding on the eaſt part upon *Emſden-wood*, on the ſouth upon, *&c.* It is alſo a ſufficient name to lay the general boundary, that is, ſome place of larger precinct, if there be no other land to paſs in the ſame precinct, as all my lands in *Dale*, my tenement in S. *Dunſtan*'s pariſh, *&c.*

A farther ſort of denomination is to name land by the attendancy they have to other lands more notorious, as parcel of my manor of *D.* belonging to ſuch a college lying upon *Thames* bank.

All theſe things are notes found in denomination of lands, becauſe they be ſigns local, and therefore of property to ſignify and name a place; but theſe notes that ſound only in demonſtration and addition, are ſuch as are but tranſitory and accidental to the nature of the place.

As *modo in tenura & occupatione* of the proprietary, tenure or poſſeſſion is but a thing tranſitory in reſpect of land; *Generatio venit, generatio migrat, terra autem manet in aeternum.*

So likewiſe matter of conveyance, title, or inſtrument.

As, *quae perquiſivi de I. D. quae deſcendebant a I. N. patre meo*, or, *in praedicta indentura dimiſſionis*, or, *in praedictis literis patentibus ſpecificat'.*

So likewiſe *continent' per aeſtimationem* 20 *acras*, or if (*per aeſtimationem*) be left out, all is one, for it is underſtood, and this matter of mea-

ſure, although it ſeem local, yet it is indeed but opinion and obſervation of men.

THE diſtinction being made, the rule is to be examined by it.

THEREFORE if I grant my cloſe called *Dale* in the pariſh of *Hurſt*, in the county of *Southampton*, and the pariſh likewiſe extendeth into the county of *Berkſhire*, and the whole cloſe of *Dale* lyeth in the county of *Berkſhire*; yet, becauſe the parcel is eſpecially named, the falſity of the addition hurteth not, and yet this addition is found in name, but (as it was ſaid) it was leſs worthy than a proper name.

SO if I grant *tenementum meum*, or *omnia tenementa mea* (for the univerſal and indefinite to this purpoſe are all one) *in parochia Sancti Butolphi extra Aldgate* (where the verity is *extra Biſhopſgate*) *in tenura Guilielmi*, which is true, yet this grant is void, becauſe that which ſounds in denomination is falſe, which is the more worthy; and that which ſounds in addition is true, which is the leſs; * and though *in tenura Guilielmi*, which is true, had been firſt placed, yet it had been all one.

BUT if I grant *tenementum meum quod perquiſivi de R. C. in Dale*, where the truth was *T. C.* and I have no other tenements in *D.* but one, this grant is good, † becauſe that which foundeth in name, (*viz.* in *Dale*) is true, and that which founded in addition (*viz. quod perquiſivi, &c.*) is only falſe.

SO if I grant *prata mea in Dale continentia* 10 *acras*, and they contain indeed twenty acres, the whole twenty paſs.

SO if I grant all my lands, being parcels *manerii de D. in praedictis literis patentibus ſpecificat'*, and there be no letters patents, yet the grant is good enough.

THE like reaſon holds in demonſtrations of perſons, that have been declared in demonſtration of lands and places, the proper name of every one is in certainty worthieſt: next are ſuch appellations as are fixed to his perſon, or at leaſt of continuance, as ſon of ſuch a man, wife of ſuch a huſband; or addition of office, as clerk of ſuch a court, *&c.* and the third are actions or accidents, which ſound no way in appellation or name, but only in circumſtance, which are leſs worthy, although they may have a proper particular reference to the intention of the grant.

AND therefore if an obligation be made to *I. S. filio & haeredi G. S.* where indeed he is a baſtard, yet this obligation is good.

SO if I grant land *Epiſcopo nunc Londinenſi qui me erudivit inpueritia*, this is a good grant, although he never inſtructed me.

BUT *e converſo*, if I grant land to *I. S. filio & haeredi G. S.* and it be true that he is ſon and heir unto *G. S.* but his name is *Thomas*, this is a void grant.

OR if in the former grant it was the Biſhop of *Canterbury* who taught me in my childhood, yet ſhall it be good (as was ſaid) to the Biſhop of *London*, and not to the Biſhop of *Canterbury*.

THE ſame rule holdeth of denomination of times, which are ſuch a day of the month, ſuch a day of the week, ſuch a Saint's day or eve, to day, to morrow; theſe are names of times.

BUT the day that I was born, the day that I was married; theſe are but circumſtances and addition of times.

AND therefore if I bind my ſelf to do ſome perſonal attendance upon you upon *Innocent*'s day, being the day of your birth, and you were not born that day, yet ſhall I attend. THERE

* Semble icy le grant uſt eſte aſſets bon, cõe fuit reſolu per cur', Co. lib. 3. fo. 10. a. vid. 33 H. 8. Dy. 50. b. 12 El. ib. 292. b. & Co. lib. 2. fo. 33. a.

† Vidę ib. que contraria eſt lex, car icy auxi le primer certainty eſt faux.

THERE reſteth two queſtions of difficulty yet upon this rule, firſt, of ſuch things whereof men take not ſo much note as that they ſhall fail of this diſtinction of name and addition.

AS, my box of ivory lying in my ſtudy ſealed up with my ſeal of arms, my ſuit of arras with the ſtory of the nativity and paſſion; of ſuch things there can be no name, but all is of deſcription, and of circumſtance, and of theſe I hold the law to be, that preciſe truth of all recited circumſtances is not required.

BUT in ſuch things *ex multitudine ſignorum colligitur identitas vera*, therefore though my box were ſealed, and although the arras had the ſtory of the nativity, and not of the paſſion, if I had no other box, nor no other ſuit, the gifts are good; and there is certainty ſufficient, for the law doth not expect a preciſe deſcription of ſuch things as have no certain denomination.

SECONDLY, Of ſuch things as do admit the diſtinction of name and addition, but the notes fall out to be of equal dignity all of name or addition.

AS, *prata mea juxta communem foſſam in D.* whereof the one is true, the other falſe, or *tenementum meum in tenura Guilielmi quod perquiſivi de R. C. in praedict' Indent' ſpecificat'*, whereof one is true, and two are falſe; or two are true, and one falſe.

So *ad curiam quam tenebat die Mercurii tertio die Martii*, whereof the one is true, the other falſe.

IN theſe caſes the former rule *ex multitudine ſignorum, &c.* holdeth not; neither is the placing of the falſity or verity firſt or laſt material, but all muſt be true, or elſe the grant is void; always underſtood, that if you can reconcile all the words, and make no falſity, that is quite out of this rule, which hath place only where there is a direct contrariety, or falſity not to be reconciled to this rule. Vide livers avant dit pur ceſt auxi.

AS if I grant all my land in *D. in tenura I. S.* which I purchaſed of *I. N.* ſpecified in a demiſe to *I. D.* and I have land in *D.* whereof in part of them all theſe circumſtances are true, but I have other lands in *D.* wherein ſome of them fail, this grant will not paſs all my land in *D.* for there theſe are references, and no words of falſity or error, but of limitation and reſtraint.

THE

THE USE of the LAW; FOR Preſervation of our Perſons, Goods, and good Names, according to the practice of the Laws and Cuſtoms of this Land.

The USE of the LAW, and wherein it principally conſiſteth.

THE uſe of the law conſiſteth principally in theſe three things:
1. To ſecure mens perſons from death and violence.
2. To diſpoſe the property of their goods and lands.
3. FOR preſervation of their good names from ſhame and infamy.

Surety to keep the peace.

FOR ſafety of perſons, the law provideth that any man ſtanding in fear of another, may take his oath before a juſtice of peace, that he ſtandeth in fear of his life, and the juſtice ſhall compel the other to be bound with ſureties to keep the peace.

Action for ſlander, battery, &c.

IF any man beat, wound, or maim another, or give falſe ſcandalous words that may touch his credit, the law giveth thereupon an action of the caſe for the ſlander of his good name; and an action of battery, or an appeal of maim, by which recompence ſhall be recovered, to the value of the hurt, damage or danger.

Appeal of murder given to the next of kin.

IF any man kill another with malice, the law giveth an appeal to the wife of the dead, if he had any, or to the next of kin that is heir, in default of a wife; by which appeal the defendant convicted is to ſuffer death, and to loſe all his lands and goods: but if the wife or heir will not ſue, or be compounded withal, yet the King is to puniſh the offence by indictment or preſentment of a lawful inqueſt and trial of the offender before competent judges; whereupon being found guilty, he is to ſuffer death, and to loſe his lands and goods.

Man-ſlaughter, when a forfeiture of goods, and when not.

IF one kill another upon a ſudden quarrel, this is man-ſlaughter, for which the offender muſt die, except he can read; and if he can read, yet muſt he loſe his goods, but no lands.

AND if a man kill another in his own defence, he ſhall not loſe his life, nor his lands, but he muſt loſe his goods, except the party ſlain did firſt aſſault him, to kill, rob, or trouble him by the high-way ſide, or in his own houſe, and then he ſhall loſe nothing.

Felo de ſe.

AND if a man kill himſelf, all his goods and chattels are forfeited, but no lands.

Felony by miſchance.

IF a man kill another by misfortune, as ſhooting an arrow at a butt or mark, or caſting a ſtone over an houſe, or the like, this is loſs of his goods and chattels, but not of his lands, nor life.

If a horſe, or cart, or a beaſt, or any other thing do kill a man, the horſe, beaſt, or other thing is forfeited to the crown, and is called a *Deodand*, and uſually granted and allowed by the King to the biſhop almoner, as goods are of thoſe that kill themſelves. Deodand.

The cutting out of a man's tongue, or putting out his eyes maliciouſly, is felony; for which the offender is to ſuffer death, and loſe his lands and goods. Cutting out tongues, and putting out eyes, felony.

But for that all puniſhment is for example's ſake, it is good to ſee the means whereby offenders are drawn to their puniſhment; and firſt for matter of the peace.

The ancient laws of *England*, planted here by the Conqueror, were, that there ſhould be officers of two ſorts in all the parts of this realm to preſerve the peace:

1. *CONSTABULARII Pacis.*
2. *CONSERVATORES Pacis.*

The office of the conſtable was, to arreſt the parties that he had ſeen breaking the peace, or in fury ready to break the peace, or was truly informed by others, or by their own confeſſion, that they had freſhly broken the peace; which perſons he might impriſon in the ſtocks, or in his own houſe, as his or their quality required, until they had become bounden with ſureties to keep the peace; which obligation from thenceforth was to be ſealed and delivered to the conſtable to the uſe of the King. And that the conſtable was to ſend to the King's exchequer or chancery, from whence proceſs ſhould be awarded to levy the debt, if the peace were broken. The office of the conſtable.

But the conſtable could not arreſt any, nor make any put in bond upon complaint of threatning only, except they had ſeen them breaking the peace, or had come freſhly after the peace was broken. Alſo, theſe conſtables ſhould keep watch about the town for the apprehenſion of rogues and vagabonds, and night-walkers, and eves-droppers, ſcouts, and ſuch like, and ſuch as go armed. And they ought likewiſe to raiſe hue and cry againſt murderers, man-ſlayers, thieves and rogues.

Of this office of conſtable there were high conſtables, two of every hundred; petty conſtables one in every village; they were in ancient time all appointed by the ſheriff of the ſhire yearly in his court called the ſheriff's *Turn*, and there they received their oath. But at this day they are appointed either in the law-day of that precinct wherein they ſerve, or elſe by the high conſtable in the ſeſſions of the peace. High-conſtables for every hundred. Petty conſtable for every village.

The ſheriff's Turn is a court very ancient, incident to his office. At the firſt it was erected by the conqueror, and called the King's-bench, appointing men ſtudied in the knowledge of the laws to execute juſtice, as ſubſtitutes to him in his name, which men are to be named, *juſticiarii ad placita coram rege aſſignati*: one of them being called *capitalis juſticiarius*, the reſt his fellows; in number as pleaſeth the King: of late but three *juſticiarii*, holden by patent. In this court every man above twelve years of age was to take his oath of allegiance to the King; if he were bound, then his lord to anſwer for him. In this court the conſtables were appointed and ſworn; breakers of the peace puniſhed by fine and impriſonment; the parties beaten or hurt recompenſed upon complaints of damages; all appeals of murder, maim, robbery, decided; contempts againſt the crown, publick annoyances The King's-bench firſt inſtituted, and its juriſdiction.

againſt the people, treaſons and felonies, and all other matters of wrong betwixt party and party for lands and goods.

Court of Marſhalſea erected, and its juriſdiction within 12 miles of the chief tunnel, &c.

But the King ſeeing the realm grow daily more and more populous, and that this one court could not diſpatch all; did firſt ordain that his marſhal ſhould keep a court, for controverſies ariſing within the verge, which is within twelve miles of the chiefeſt tunnel of the court, which did but eaſe the King's-bench in matters only concerning debts, covenants, and ſuch like, of thoſe of the King's houſhold only, never dealing in breaches of the peace, or concerning the crown by any other perſons, or any pleas of lands.

Sheriff's Turn inſtituted upon the diviſion of *England* into counties, &c. Likewiſe called *Curia viſus franci plegii*.

Insomuch, as the King for farther eaſe having divided this kingdom into counties, and committing the charge of every county to a lord or earl, did direct that thoſe earls, within their limits, ſhould look to the matter of the peace, and take charge of the conſtables, and reform publick annoyances, and ſwear the people to the crown, and take pledges of the freemen for their allegiance; for which purpoſe the county did once every year keep a court, called the ſheriff's Turn; at which all the county (except women, clergy, children under twelve, and aged above ſixty) did appear to give or renew their pledges for allegiance. And the court was called, *Curia viſus franci plegii*, a view of the pledges of freemen; or, *Turna comitatus*.

Subdiviſion of the county court into hundreds.

At which meeting or court there fell, by occaſion of great aſſemblies, much blood-ſhed, ſcarcity of victuals, mutinies, and the like miſchiefs, which are incident to the congregations of people, by which the King was moved to allow a ſubdiviſion of every county into hundreds, and every hundred to have a court, whereunto the people of every hundred ſhould be aſſembled twice a year for ſurvey of pledges, and uſe of that juſtice which was formerly executed in that grand court for the county; and the count or earl appointed a bailiff under him to keep the hundred court.

The charge of the county taken from the earls, and committed to the ſheriff.

But in the end, the Kings of this realm found it neceſſary to have all execution of juſtice immediately from themſelves, by ſuch as were more bound than earls to that ſervice, and readily ſubject to correction for their negligence or abuſe; and therefore took to themſelves the appointing of a ſheriff yearly in every county, calling them *Vicecomites*, and to them directed ſuch writs and precepts for executing juſtice in the county, as fell out needful to have been diſpatched, committing to the ſheriff *cuſtodiam comitatus*; by which the earls were ſpared of their toils and labours, and that was laid upon the ſheriffs. So as now the ſheriff doth all the King's buſineſs in the county, and that is now called the ſheriff's Turn; that is to ſay, he is judge of this grand court for the county, and alſo of all hundred courts not given away from the crown.

The ſheriff is judge of all hundred courts, &c.

County court kept monthly by the ſheriff.

He hath another court called the county court belonging to his office, wherein men may ſue monthly for any debt or damages under 40 *s.* and may have writs for to replevy their cattel diſtrained and impounded by others, and there try the cauſe of their diſtreſs; and by a writ called *juſticies*, a man may ſue for any ſum; and in this court the ſheriff by a writ called an *exigent* doth proclaim men ſued in courts above to render their bodies, or elſe they be out-lawed.

The office of the ſheriff.

This ſheriff doth ſerve the King's writs of proceſs, be they ſummons, or attachments to compel men to anſwer to the law, and all writs of execution of the law, according to judgments of ſuperior courts, for taking of mens goods, lands, or bodies, as the cauſe requireth.

Hundred-courts to whom at firſt granted.

The hundred courts were moſt of them granted to religious men, noblemen, and others of great place. And alſo many men of good quality have attained

attained by charter, and ſome by uſage within manors of their own, liberty of keeping law-days, and to uſe there juſtice appertaining to a law-day.

Whoſoever is lord of the hundred court, is to appoint two high conſtables of the hundred, and alſo is to appoint in every village a petty conſtable, with a tithing-man to attend in his abſence, and to be at his commandment when he is preſent, in all ſervices of his office for his aſſiſtance. Lord of the hundred to appoint two high-conſtables.

There have been by uſe and ſtatute law (beſides ſurveying of the pledges of freemen, and giving the oath of allegiance, and making conſtables) many additions of powers and authority given to the ſtewards of leets and law-days, to be put in ure in their courts; as for example, they may puniſh inn-keepers, victuallers, bakers, butchers, poulterers, fiſhmongers, and tradeſmen of all ſorts, ſelling with under weights or meaſures, or at exceſſive prices, or things unwholeſome, or ill made, in deceit of the people. They may puniſh thoſe that do ſtop, ſtraiten, or annoy the high-ways, or do not according to the proviſion enacted, repair or amend them, or divert water-courſes, or deſtroy fry of fiſh, or uſe engines or nets to take deer, conies, pheaſants, or partridges, or build pigeon-houſes; except he be lord of the manor, or parſon of the church. They may alſo take preſentment upon oath of the twelve ſworn jury before them of all felonies; but they cannot try the malefactors, only they muſt by indenture deliver over thoſe preſentments of felony to the judges, when they come their circuits into that county. All thoſe courts before mentioned are in uſe, and exerciſed as law at this day, concerning the ſheriff's law-days and leets, and the offices of high conſtables, petty conſtables, and tithing-men; howbeit, with ſome further additions by ſtatute laws, laying charge upon them for taxation for poor, for ſoldiers, and the like, and dealing without corruption, and the like. What matters they enquire of in leets and law-days.

Conſervators of the peace were in ancient times certain, which were aſſigned by the King to ſee the peace maintained, and they were called to the office by the King's writ, to continue for term of their lives, or at the King's pleaſure. Conſervators of the peace by writ for term of life, or at the King's pleaſure.

For this ſervice, choice was made of the beſt men of calling in the country, and but few in the ſhire. They might bind any man to keep the peace, and to good behaviour, by recognizance to the King with ſureties, and they might by warrant ſend for the party, directing their warrant to the ſheriff or conſtable, as they pleaſe; to arreſt the party and bring him before them. This they uſed to do, when complaint was made by any that he ſtood in fear of another, and ſo took his oath; or elſe, where the conſervator himſelf did, without oath or complaint, ſee the diſpoſition of any man inclined to quarrel and breach of the peace, or to miſ-behave himſelf in ſome outragious manner of force or fraud: there by his own diſcretion he might ſend for ſuch a fellow, and make him find ſureties of the peace, or of his good behaviour, as he ſhould ſee cauſe; or elſe commit him to the goal if he refuſed. What their office was.

The judges of either bench in *Weſtminſter*, barons of the exchequer, maſter of the rolls, and juſtices in eire and aſſizes in their circuits, were all without writ conſervators of the peace in all ſhires of *England*, and continue to this day. Conſervators of the peace by virtue of their office.

But now at this day conſervators of the peace are out of uſe, and in lieu of them there are ordained juſtices of peace, aſſigned by the King's commiſſions in every county, which are moveable at the King's pleaſure; but the power of placing and diſplacing juſtices of the peace is by uſe delegated from the King to the Chancellor. Juſtices of peace ordained in lieu of conſervators. Power of placing delegated to the Chancellor.

That

THAT there ſhould be juſtices of peace by commiſſions, it was firſt enacted by a ſtatute made 1 *Edw.* III. and their authority augmented by many ſtatutes made ſince in every King's reign.

To fine offenders to the crown, but not to recompenſe the party grieved. parl. ſtat. 17 R. 2. cap. 10. & v. Dyer 69. b. Ils ount poier d'inquier de murder car ceo eſt felon. * Authority of the juſtices of peace, &c.

THEY are appointed to keep four ſeſſions every year; that is, every quarter one. Theſe ſeſſions are a ſitting of the juſtices to diſpatch the affairs of their commiſſions. They have power to hear and determine in their ſeſſions, all felonies, breaches of the peace, contempts and treſpaſſes, ſo far as to fine the offender to the crown, but not to award recompence to the party grieved.

*THEY are to ſuppreſs riots and tumults, to reſtore poſſeſſions forcibly taken away, to examine all felons apprehended and brought before them; to ſee impotent poor people, or maimed ſoldiers provided for, according to the laws; and rogues, vagabonds, and beggars puniſhed. They are both to licenſe and ſuppreſs ale-houſes, badgers of corn and victuals, and to puniſh foreſtallers, regrators, and engroſſers.

THROUGH theſe, in effect, run all the county ſervices to the crown, as taxations of ſubſidies, muſtering men, arming them, and levying forces, that is done by a ſpecial commiſſion or precept from the King. Any of theſe juſtices by oath taken by a man that he ſtandeth in fear that another man will beat him, or kill him, or burn his houſe, are to ſend for the party by warrant of attachment directed to the ſheriff or conſtable, and then to bind the party with ſureties by recognizance to the King, to keep the peace, and alſo to appear at the next ſeſſions of the peace; at which next ſeſſions, when every juſtice of peace hath therein delivered all their recognizances ſo taken, then the parties are called and the cauſe of binding to the peace examined, and both parties being heard, the whole bench is to determine as they ſee cauſe, either to continue the party ſo bound, or elſe to diſcharge him.

Beating, killing, burning of houſes. Attachments for ſurety of the peace. Recognizance of the peace delivered by the juſtices at their ſeſſions.

THE juſtices of peace in their ſeſſions are attended by the conſtables and bailiffs of all hundreds and liberties within the county, and by the ſheriff or his deputy, to be employed as occaſion ſhall ſerve in executing the precepts and directions of the court. They proceed in this ſort, the ſheriff doth ſummon twenty-four freeholders, diſcreet men of the ſaid county, whereof ſome ſixteen are ſelected and ſworn, and have their charge to ſerve as the grand jury, the party indicted is to traverſe the indictment, or elſe to confeſs it, and ſo ſubmit himſelf to be fined as the court ſhall think meet (regard had to the offence) except the puniſhment be certainly appointed (as often it is) by ſpecial ſtatutes.

Quarter ſeſſions held by the juſtices of the peace.

THE juſtices of peace are many in every county, and to them are brought all traitors, felons, and other malefactors of any ſort upon their firſt apprehenſion; and that juſtice to whom they are brought examineth them, and heareth their accuſations, but judgeth not upon it; only if he find the ſuſpicion but light, then he taketh bond with ſureties of the accuſed to appear either at the next aſſizes, if it be a matter of treaſon or felony; or elſe at the quarter ſeſſions, if it be concerning riot or miſbehaviour, or ſome other ſmall offence. And he alſo then bindeth to appear thoſe that give teſtimony and proſecute the accuſation, all the accuſers and witneſſes, and ſo ſetteth the party at large. And at the aſſizes or ſeſſions (as the caſe falleth out) he certifieth the recognizances taken of the accuſed, accuſers, and witneſſes, who being there are called, and appearing, the cauſe of the accuſed is debated according to law for his clearing or condemning.

The authority of juſtices of the peace out of their ſeſſions.

BUT if the party accuſed ſeem upon pregnant matter in the accuſation, and to the juſtice, to be guilty, and the offence heinous, or the offender taken with the *mainour*, then the juſtice is to commit the party by his warrant called a *mittimus*, to the goaler of the common goal of the county, there

there to remain until the aſſizes. And then the juſtice is to certify his accuſation, examination, and recognizance taken for the appearances and proſecution of the witneſſes, ſo as the judges may, when they come, readily proceed with him as the law requireth.

Judges of aſſize in place of the ancient judges in eyre Temp. *R.* II.

THE judges of the aſſizes as they be now came into the place of the ancient juſtices in eyre, called *juſticiarii itinerantes*, which in the prime Kings after the conqueſt, until *H.* III's time eſpecially, and after in leſſer meaſure even to *R.* II's time, did execute the juſtice of the realm; they began in this ſort.

King's-bench, marſhal's-court, county-court, ſheriff's-turns, hundreds, leets, and law-days, dealt only in crown matters; juſtices in eyre dealt in private titles of lands or goods, and in all treaſons and felonies, which the county courts meddled not in.

THE King, not able to diſpatch buſineſs in his own perſon, erected the court of King's-bench. That not able to receive all, nor meet to draw the people all to one place, there were ordained counties, and the ſheriffs Turns, hundred courts, and particular leets, and law-days, as before mentioned, which dealt only with crown matters for the publick; but not the private titles of lands, or goods, nor the trial of grand offences of treaſons and felonies. All the counties of the realm were divided into ſix circuits: and two learned men well read in the laws of the realm, were aſſigned by the King's commiſſion to every circuit, and to ride twice a year through thoſe ſhires allotted to that circuit, making proclamation beforehand, a convenient time, in every county, of the time of their coming, and place of their ſitting, to the end the people might attend them in every county of that court.

THEY were to ſtay three or four days in every county, and in that time all the cauſes of that county were brought before them by the parties grieved, and all the priſoners of the ſaid goal in every ſhire, and whatſoever controverſies ariſing concerning life, lands, or goods.

The authority of judges in eyre, tranſlated to juſtices of aſſize.

THE authority of theſe judges in eyre, is in part tranſlated by act of parliament to juſtices of aſſize, which be now the judges of circuits, and they to uſe the ſame courſe that juſtices in eyre did, to proclaim their coming every half year, and the place of their ſitting.

Juſtices of aſſize much leſſened by the court of common-pleas, erected in *H.* III's time.

THE buſineſs of the juſtices in eyre, and of the juſtices of aſſize at this day is much leſſened, for that in *H.* III's time there was erected the court of common-pleas at *Weſtminſter*, in which court have been ever ſince, and yet are, begun and handled the great ſuits of lands, debts, benefices and contracts, fines for aſſurance of lands and recoveries, which were wont to be either in the King's-bench, or elſe before the juſtices in eyre. But the ſtatute of *Mag. Chart. cap.* 11. is negative againſt it, *viz. Communia placita non ſequantur curiam noſtram, ſed teneantur in aliquo loco certo*; which *locus certus* muſt be the common-pleas; yet the judges of circuits have now five commiſſions by which they ſit.

Juſtices of aſſize ſit by five commiſſions.

THE firſt is a commiſſion of oyer and terminer, directed unto them, and many others of the beſt account, in their circuits; but in this commiſſion the judges of aſſize are of the *Quorum*, ſo as without them there can be no proceeding.

Oyer and terminer, in which the judges are of the quorum, &c.

THIS commiſſion giveth them power to deal with treaſons, murders, and all manner of felonies and miſdemeanors whatſoever; and this is the largeſt commiſſion that they have.

Goal delivery directed only to the judges and clerk of the aſſize.

THE ſecond is a commiſſion of goal-delivery, that is only to the judges themſelves, and the clerk of the aſſize aſſociate: and by this commiſſion they are to deal with every priſoner in the goal, for what offence ſoever he be there, and to proceed with him according to the laws of the realm, and

the quality of his offence; and they cannot by this commiſſion do any thing concerning any man, but thoſe that are priſoners in the goal. The courſe now in uſe of execution of this commiſſion of goal-delivery, is this. There is no priſoner but is committed by ſome juſtice of peace, who before he committed him took his examination, and bound his accuſers and witneſſes to appear and proſecute at the goal-delivery. This juſtice doth certify theſe examinations and bonds, and thereupon the accuſer is called ſolemnly into the court, and when he appeareth, he is willed to prepare a bill of indictment againſt the priſoner, and go with it to the grand jury, and give evidence upon their oaths, he and the witneſſes; which he doth: and then the grand jury write thereupon either *billa vera*, and then the priſoner ſtandeth indicted, or elſe *ignoramus*, and then he is not touched. The grand jury deliver theſe bills to the judges in their court, and ſo many as they find indorſed *billa vera*, they ſend for thoſe priſoners, then is every man's indictment put and read to him, and they aſk him whether he be guilty or not: if he ſaith guilty, his confeſſion is recorded; if he ſay not guilty, then he is aſked how he will be tried; he anſwereth, by the country. Then the ſheriff is commanded to return the names of twelve freeholders to the court, which freeholders be ſworn to make true delivery between the King and the priſoner; and then the indictment is again read, and the witneſſes ſworn to ſpeak their knowledge concerning the fact, and the priſoner is heard at large what defence he can make, and then the jury go together and conſult. And after a while they come in with a verdict of guilty or not guilty, which verdict the judges do record accordingly. If any priſoner plead not guilty upon the indictment, and yet will not put himſelf to trial upon the jury (or ſtand mute) he ſhall be preſſed.

The manner of the proceedings of the juſtices of circuits. Of the judges for the goal-delivery.

THE judges, when many priſoners are in the goal, do in the end, before they go, peruſe every one. Thoſe that were indicted by the grand jury, and found not guilty by the ſelect jury, they judge to be quitted, and ſo deliver them out of the goal. Thoſe that are found guilty by both juries, they judge to death, and command the ſheriff to ſee execution done. Thoſe that refuſe trial by the country, or ſtand mute upon the indictment, they judge to be preſſed to death: ſome whoſe offences are pilfering under twelve pence value, they judge to be whipped. Thoſe that confeſs their indictments, they judge to death, whipping, or otherwiſe, as their offence requireth. And thoſe that are not indicted at all, but their bill of indictment returned with *ignoramus* by the grand jury, and all others in the goal, againſt whom no bills at all are preferred, they do acquit by proclamation out of the goal; that one way or other they rid the goal of all the priſoners in it. But becauſe ſome priſoners have their books, and be burned in the hand, and ſo delivered, it is neceſſary to ſhew the reaſon thereof. This having their books is called their clergy, which in ancient time began thus.

Books allowed clergy, &c.

FOR the ſcarcity of the clergy in the realm of *England*, to be diſpoſed in religious houſes, or for prieſts, deacons, and clerks of pariſhes, there was a prerogative allowed to the clergy, that if any man that could read as a clerk were to be condemned to death, the biſhop of the dioceſe might, if he would, claim him as a clerk, and he was to ſee him tried in the face of the court whether he could read or not. The book was prepared and brought by the biſhop, and the judge was to turn to ſome place as he ſhould think meet; and if the priſoner could read, then the biſhop was to have him delivered over unto him, to diſpoſe of in ſome places of the clergy as he ſhould

ſhould think meet: but either the biſhop would not demand him, or that the priſoner could not read, then was he to be put to death.

And this clergy was allowable in the ancient times and law, for all offences, whatſoever they were, except treaſon, and the robbing of churches of their goods and ornaments. But by many ſtatutes made ſince, the clergy is taken away for murder, burglary, robbery, purſe-cutting, horſe-ſtealing, and diverſe other felonies, particularized by the ſtatutes to the judges; and laſtly, by a ſtatute made 18 *Elizabeth*, the judges themſelves are appointed to allow clergy to ſuch as can read, being not ſuch offenders, from whom clergy is taken away by any ſtatute, and to ſee them burned in the hand, and ſo diſcharge them, without delivering them to the biſhop; howbeit, the biſhop appointeth the deputy to attend the judges with a book, to try whether they can read or not.

Clergy allowed anciently in all offences, except treaſon and robbing of churches, now taken away.

1. In murder. 2. In burglary. 3. Robbery. 4. Purſe-cutting. 5. Horſe-ſtealing, and in diverſe other offences. By the ſtat. of 18 *E.* judges are to allow clergy, and to ſee them burned in the hand, and to diſcharge the priſoners without delivering them to the biſhop.

The third commiſſion that the judges of circuits have, is a commiſſion directed to themſelves only, and the clerk of aſſize to take aſſizes, by which they are called juſtices of aſſize; and the office of thoſe juſtices is to do right upon writs called aſſizes, brought before them by ſuch as are wrongfully thruſt out of their lands. Of which number of writs there was far greater ſtore brought before them in ancient times than now; for that mens ſeiſins and poſſeſſions are ſooner recovered by ſealing leaſes upon the ground, and by bringing an *ejectione firmae*, and trying their title ſo, than by the long ſuits of aſſizes.

The fourth commiſſion, is a commiſſion to take *Niſi Prius* directed to none but to the judges themſelves, and their clerks of aſſizes, by which they are called juſtices of *Niſi Prius*. Theſe *Niſi Prius* happen in this ſort; when a ſuit is begun for any matter in one of the three courts, the King's-bench, common-pleas, or the exchequer here above, and the parties in their pleadings do vary in a point of fact; as for example, if in an action of debt upon obligation the defendant denies the obligation to be his debt; or in any action of treſpaſs grown for taking away goods, the defendant denieth that he took them, or in action of the caſe for ſlanderous words, the defendant denieth that he ſpake them, *&c.* Then the plaintiff is to maintain and prove that the obligation is the defendant's deed, that he either took the goods, or ſpake the words; upon which denial and affirmation the law ſaith, that iſſue is joined betwixt them, which iſſue of the fact is to be tried by a jury of twelve men of the county, where it is ſuppoſed by the plaintiff to be done, and for that purpoſe the judges of the court do award a writ of *Venire facias* in the King's name to the ſheriff of that county, commanding him to cauſe four and twenty diſcreet freeholders of his county, at a certain day, to try this iſſue ſo joined, out of which four and twenty, only twelve are choſen to ſerve. And that double number is returned, becauſe ſome may make default, and ſome be challenged upon kindred, alliance, or partial dealing.

4. Commiſſion to take *Niſi Prius*, directed to two judges, and the clerk of the aſſize. *Niſi Prius*.

These four and twenty the ſheriff doth name and certify to the court, and withal, that he hath warned them to come at the day according to their writ. But becauſe at the firſt ſummons there falleth no puniſhment upon the four and twenty if they come not, they very ſeldom or never appear upon the firſt writ; and upon their default there is another writ * returned to the ſheriff, commanding him to diſtrain them by their lands to appear at a certain day appointed by the writ, which is the next term after, *Niſi prius juſticiarii noſtri ad aſſiſas capiendas venerint, &c.* of which words the writ is called

* *Diſtringas.* The manner of proceeding of juſtices of circuits. The courſe the judges hold in the taking of *Niſi Prius*.

called a *Niſi Prius*, and the judges of the circuit of that county in that vacation, and mean time, before the day of appearance appointed for the jury above, here by their commiſſion of *Niſi Prius*, have authority to take the appearance of the jury in the county before them, and there to hear the witneſſes and proofs on both ſides, concerning the iſſue of fact, and to take the verdict of the jury, and againſt the day they ſhould have appeared above, to return the verdict read in the court above, which return is called a *Poſtea*.

Poſtea.

And upon this verdict, clearing the matter in fact, one way or other, the judges above give judgment for the party for whom the verdict is found, and for ſuch damages and coſts as the jury do aſſeſs.

By thoſe trials called *Niſi Prius*, the juries and the parties are eaſed much of the charge they ſhould be put to, by coming to *London* with their evidences and witneſſes; and the courts of *Weſtminſter* are eaſed of much trouble they ſhould have, if all the juries for trials ſhould appear and try their cauſes in thoſe courts; for thoſe courts above have little leiſure now: though the juries come not up, yet in matters of great weight, or where the title is intricate or difficult, the judges above, upon information to them, do retain thoſe cauſes to be tried there, and the juries do at this day, in ſuch cauſes, come to the bar at *Weſtminſter*.

5. Commiſſion is a commiſſion of the peace. The juſtices of the peace and the ſheriff are to attend the judges in their county.

The fifth commiſſion that the judges in their circuits do ſit by, is the commiſſion of the peace in every county of their circuit. And all the juſtices of the peace, having no lawful impediment, are bound to be preſent at the aſſizes to attend the judges, as occaſion ſhall fall out: if any make default, the judges may ſet a fine upon him at their pleaſure and diſcretions. Alſo the ſheriff in every ſhire through the circuit, is to attend in perſon, or by a ſufficient deputy allowed by the judges, all that time they be within the county, and the judges may fine him if he fail, or for negligence or miſbehaviour in his office before them; and the judges above may alſo fine the ſheriff, for not returning, or not ſufficient returning of writs before them.

Property in lands, how gotten or transferred.

1. By entry.
2. By deſcent.
3. By eſcheat.
4. Most uſually by conveyance.

Of the property of lands to be gained by entry.

1. Property by entry is, where a man findeth a piece of land that no other poſſeſſeth, or hath title unto, and he that ſo findeth it doth enter, this entry gaineth a property. This law ſeemeth to be derived from this text, *Terram dedit filiis hominum*, which is to be underſtood, to thoſe that will till and manure it, and ſo make it yield fruit: and that is he that entereth into it, where no man had it before. But this manner of gaining lands was in the firſt days, and is not now of uſe in *England*, for that by the conqueſt, all the land of this nation was in the Conqueror's hands, and appropriated unto him; except religious and church lands, and the lands in *Kent*, which by compoſition were left to the former owners, as the Conqueror found them; ſo that none but the biſhopricks, churches, and the men of *Kent*, can at this day make any greater title than from the conqueſt, to any lands in *England*; and lands poſſeſſed without any ſuch title, are in the crown, and not in him that firſt entereth; as it is in land left by

All lands in *England* were the Conqueror's, and held of him, except, 1. Religious and church-lands. 2. The lands of the men of *Kent*.

by the ſea; this land belongeth to the King, and not to him that hath the lands next adjoining, which was the ancient ſea banks: this is to be underſtood of the inheritance of lands, *viz.* that the inheritance cannot be gained by the firſt entry. But an eſtate for another man's life by occupancy, may at this day be gotten by entry. As a man called *A.* having land conveyed unto him for the life of *B.* dieth without making any eſtate of it, there, whoſoever firſt entereth into the land after the deceaſe of *A.* getteth the property in the land for time of the continuance of the eſtate which was granted to *A.* for the life of *B.* which *B.* yet liveth, and therefore the ſaid land cannot revert till *B.* die. And to the heir of *A.* it cannot go, for that it is not any eſtate of inheritance, but only an eſtate for another man's life; which is not deſcendable to the heir, except he be ſpecially named in the grant, *viz.* to him and his heirs. As for the executors of *A.* they cannot have it, for it is not an eſtate teſtamentary, that it ſhould go to the executors as goods and chattels ſhould, ſo as in truth no man can entitle himſelf unto thoſe lands; and therefore the law preferreth him that firſt entreth, and he is called *occupans*, and ſhall hold it during the life of *B.* but muſt pay the rent, perform the conditions, and do no waſte: and he may by deed aſſign it to whom he pleaſe in his life-time. But if he die before he aſſign it over, then it ſhall go again to whomſoever firſt entreth and holdeth; and ſo all the life of *B.* ſo often as it ſhall happen.

Land left by the ſea belongeth to the King.

Occupancy.

Likewise, if any man doth wrongfully enter into another man's poſſeſſion, and put the right owner of the freehold and inheritance from it, he thereby getteth the freehold and inheritance by diſſeiſin, and may hold it againſt all men, but him that hath right, and his heirs, and is called a diſſeiſor. Or if any one die ſeiſed of lands, and before his heir doth enter, one that hath no right doth enter into the lands, and holdeth them from the right heir, he is called an abator, and is lawful owner againſt all men but the right heir.

And if ſuch perſon abator or diſſeiſor (ſo as the diſſeiſor hath quiet poſſeſſion five years next after the diſſeiſin) do continue their poſſeſſion, and die ſeiſed, and the land deſcend to his heir, they have gained the right to the poſſeſſion of the land againſt him that hath right, till he recover it by fit action real at the common law. And if it be not ſued for at the common law, within threeſcore years after the diſſeiſin, or abatement committed, the right owner hath loſt his right by that negligence. And if a man hath divers children, and the elder, being a baſtard, doth enter into the land, and enjoyeth it quietly during his life, and dieth thereof ſo ſeiſed, his heirs ſhall hold the land againſt all the lawful children, and their iſſues.

Property of lands by deſcent.

Property of lands by deſcent is, where a man hath lands of inheritance and dieth, not diſpoſing of them, but leaving it to go (as the law caſteth it) upon the heir. This is called a deſcent in law, and upon whom the deſcent is to light, is the queſtion. For which purpoſe, the law of inheritance preferreth the firſt child before all others, and amongſt children the male before the female; and amongſt males the firſt born. If there be no children, then the brother; if no brother, then ſiſters; if neither brothers nor ſiſters, then uncles, and for lack of uncles, aunts; if none of them, then couſins in the neareſt degree of conſanguinity, with theſe three rules of diverſities. 1. That the eldeſt male ſhall ſolely inherit; but if it come to females, then they being all in an equal degree of nearneſs ſhall inherit all together, and are called parceners, and all they make but one heir to the anceſtor. 2. That no brother or ſiſter of the half blood ſhall inherit to his

Of deſcent: three rules.

Brother or ſiſter of the half blood ſhall not inherit to his brother or ſiſter, but only as a child to his parents.

brother or ſiſter, but as a child to his parents: as for example, if a man have two wives, and by either wife a ſon, the eldeſt ſon over-living his father, is to be preferred to the inheritance of the father, being fee-ſimple; but if he entreth and dieth without a child, the brother ſhall not be his heir, becauſe he is of the half blood to him, but the uncle of the eldeſt brother or ſiſter of the whole blood: yet if the eldeſt brother had died, or had not entered in the life of the father, either by ſuch entry or conveyance, then the youngeſt brother ſhould inherit the land that the father had, although it were a child by the ſecond wife, before any daughter by the firſt. The third rule about deſcents: That land purchaſed ſo by the party himſelf that dieth, is to be inherited; firſt, by the heirs of the father's ſide, then if he have none of that part, by the heirs of the mother's ſide. But lands deſcended to him from his father or mother, are to go to that ſide only from which they came, and not to the other ſide.

Deſcent.

Cuſtoms of certain places.

THOSE rules of deſcent mentioned before are to be underſtood of fee-ſimples, and not of entailed lands, and thoſe rules are reſtrained by ſome particular cuſtoms of ſome particular places: as namely, the cuſtoms of *Kent*, that every male of equal degree of childhood, brotherhood, or kindred, ſhall inherit equally (as daughters ſhall being parceners;) and in many borough towns of *England*, the cuſtom alloweth the youngeſt ſon to inherit, and ſo the youngeſt daughter. The cuſtom of *Kent*, is called *Gavelkind*. The cuſtom of boroughs, *Burgh-Engliſh*.

AND there is another note to be obſerved in fee-ſimple inheritance, and that is, that every heir having fee-ſimple land or inheritance, be it by common law or by cuſtom, of either *Gavelkind* or *Burgh-Engliſh*, is chargeable ſo far forth as the value thereof extendeth, with the binding acts of the anceſtors from whom the inheritance deſcendeth; and theſe acts are collateral incumbrances, and the reaſon of this charge is, *Qui ſentit commodum, ſentire debet & incommodum ſive onus.* As for example, if a man bind himſelf and his heirs in an obligation, or do covenant by writing for him and his heirs, or do grant an annuity for him and his heirs, or do make a warranty of land, binding him and his heirs to warranty: in all theſe caſes the law chargeth the heir after the death of the anceſtor with this obligation, covenant, annuity, and warranty; yet with theſe three cautions: firſt, that the party muſt by ſpecial name bind himſelf and his heirs, or covenant, grant and warrant for himſelf and his heirs; otherwiſe the heir is not to be touched.

Every heir having land is bound by the binding acts of his anceſtors, if he be named.

Dyer 114. Plowd.

Secondly, that ſome action muſt be brought againſt the heir, whilſt the land or other inheritance reſteth in him unaliened away: for if the anceſtor die, and the heir, before an action be brought againſt him upon thoſe bonds, covenants, or warranties, do alien away the land, then the heir is clean diſcharged of the burthen; except the land was by fraud conveyed away of purpoſe to prevent the ſuit intended againſt him.

Dyer 149. Plowd.

Thirdly, that no heir is farther to be charged than the value of the land deſcended unto him from the ſame anceſtor that made the inſtrument of charge, and that land alſo, not to be ſold out-right for the debt, but to be kept in extent, and at a yearly value, until the debt or damage be run out. Nevertheleſs, if an heir that is ſued upon ſuch a debt of his anceſtor do not deal clearly with the court when he is ſued, that is, if he come not in immediately, and by way of confeſſion ſet down the true quantity of his inheritance deſcended, and ſo ſubmit himſelf therefore, as the law requireth, then that heir that otherwiſe demeaneth himſelf, ſhall be charged of his own lands or goods, and of his money, for this deed of his anceſtor. As for example; if a man

Day and *Pepp*'s caſe.

Heir charged for his falſe plea.

bind himſelf and his heirs in an obligation of one hundred pounds, and dieth leaving but ten acres of land to his heir, if his heir be ſued upon the bond, and cometh in, and denieth that he hath any lands by deſcent, and it is found againſt him by the verdict that he hath ten acres; this heir ſhall be now charged by his falſe plea of his own lands, goods and body, to pay the hundred pound, although the ten acres be not worth ten pound.

Property of lands by eſcheat.

PROPERTY † of lands by eſcheat, is where the owner died ſeiſed of the lands in poſſeſſion without child or other heir, thereby the land, for lack of other heir, is ſaid to eſcheat to the lord of whom it is holden. This lack of heir happeneth principally in two caſes: Firſt, where the land's owner is a baſtard. Secondly, where he is attainted of felony or treaſon. For neither can a baſtard have any heir, except it be his own child, nor a man attainted of treaſon, although it be his own child.

Two cauſes of eſcheat. 1. Baſtardy. 2. Attainder of treaſon, felony.

Attainder of treaſon entitleth the King, though lands be not holden of him: otherwiſe in attainder of felony, &c. for there the King ſhall have but *annum, diem & vaſtum.*

UPON attainder of treaſon the King is to have the land, although he be not the lord of whom it is held, becauſe it is a royal eſcheat. But for felony it is not ſo, for there the King is not to have the eſcheat, except the land be holden of him: and yet where the land is not holden of him, the King is to have the land for a year and a day next enſuing the judgment of the attainder, with a liberty to commit all manner of waſte all that year in houſes, gardens, ponds, lands, and woods.

In eſcheats, 1. The tenure. 2. The manner of the attainder.

IN theſe eſcheats two things are eſpecially to be obſerved; the one is, the tenure of the lands, becauſe it directeth the perſon to whom the eſcheat belongeth, *viz.* the lord of the manor of whom the land is holden. 2. The manner of ſuch attainder which draweth with it the eſcheat. Concerning the tenure of lands, it is to be underſtood, that all lands are holden of the crown either mediately or immediately, and that the eſcheat appertaineth to the immediate lord, and not to the mediate. The reaſon why all land is holden of the crown immediately, or by meſne lords, is this.

* The Conqueror got all the lands of the realm into his hands, and reſerved rents and ſervices.

THE * Conqueror got by right of conqueſt all the land of the realm into his own hands in demeſne, taking from every man all eſtate, tenure, property and liberty of the ſame, (except religious and church lands, and the land in *Kent*:) and ſtill as he gave any of it out of his own hand, he reſerved ſome retribution of rents, or ſervices, or both, to him and to his heirs; which reſervation is that which is called the tenure of land.

Knight's-ſervice *in capite* firſt inſtituted.

IN which reſervation he had four inſtitutions, exceeding politick and ſuitable to the ſtate of a conqueror.

The reſervations in knight's-ſervice. 1. Marriage of the wards. 2. Horſe for ſervice. 3. Homage and fealty. 4. Primer ſeiſin.

FIRST, Seeing his people to be part *Normans*, and part *Saxons*, the *Normans* he brought with him, the *Saxons* he found here; he bent himſelf to conjoin them by marriages in amity, and for that purpoſe ordained, that if thoſe of his nobles, knights, and gentlemen, to whom he gave great rewards of lands ſhould die, leaving their heir within age, a male within twenty-one, and a female within fourteen years, and unmarried, then the King ſhould have the beſtowing of ſuch heirs in marriage in ſuch a family, and to ſuch perſons as he ſhould think meet; which intereſt of marriage went ſtill implied, and doth at this day in every tenure called knight's-ſervice.

The policy of the Conqueror in the reſervation of ſervices.

THE ſecond was, to the end that his people ſhould ſtill be conſerved in warlike exerciſes and able for his defence. When therefore he gave any good portion of lands, that might make the party of abilities or ſtrength, he withal reſerved this ſervice, that that party and his heirs having ſuch lands, ſhould keep a horſe of ſervice continually, and ſerve upon him himſelf when the King went to wars; or elſe having impediment to excuſe his own perſon, ſhould find another

Reſervation that his tenant ſhould keep a horſe of ſervice, and ſerve upon him himſelf when the King went to war.

another to ſerve in his place: which ſervice of horſe and man, is a part of that tenure called knight's-ſervice at this day.

But if the tenant himſelf be an infant, the King is to hold this land himſelf until he come to full age, finding him meat, drink, apparel, and other neceſſaries, and finding a horſe and a man with the overplus, to ſerve in the wars as the tenant himſelf ſhould do if he were at full age.

But if this inheritance deſcend upon a woman that cannot ſerve by her ſex, then the King is not to have the lands, ſhe being of fourteen years of age, becauſe ſhe is then able to have an huſband that may do the ſervice in perſon.

3 Inſtitution of the Conqueror was, that his tenants by knight's-ſervice vow, 1. Homage. 2. Fealty.

* The third inſtitution was, that upon every gift of land the King reſerved a vow and an oath to bind the party to his faith and loyalty: that vow was called homage, the oath fealty. Homage is to be done kneeling, holding his hands between the knees of the lord, ſaying in the *French* tongue, I become your man of life and limb, and of earthly honour. Fealty is to take an oath upon a book, that he will be a faithful tenant to the King, and do his ſervice, and pay his rents according to his tenure.

4. Inſtitution was for recognition of the King's bounty, every heir to pay one year's profit of the lands called *primer ſeiſin*.

† The fourth inſtitution was, that for recognition of the King's bounty by every heir ſucceeding his anceſtor in thoſe knight's-ſervice lands, the King ſhould have *primer ſeiſin* of the lands, which is one year's profit of the lands; and until this be paid, the King is to have poſſeſſion of the land, and then to reſtore it to the heir; which continueth at this day in uſe, and is the very cauſe of ſuing livery, and that as well where the heir hath been in ward as otherwiſe.

Knight's-ſervice *in capite* is a tenure *de perſona regis*. Tenants by grand ſerjeanty were to pay relief at the full age of every heir, which was one year's value of the lands ſo held, *ultra repriſe*. Grand ſerjeanty. Petty ſerjeanty.

These before-mentioned be the rights of the tenure, called knight's-ſervice *in capite*, which is as much to ſay, as tenure *de perſona regis*; and *caput* being the chiefeſt part of the perſon, it is called a tenure *in capite*, or in chief. And it is alſo to be noted, that as this tenure *in capite* by knight's-ſervice generally was a great ſafety to the crown, ſo alſo the Conqueror inſtituted other tenures *in capite* neceſſary to his eſtate; as namely, he gave divers lands to be holden of him by ſome ſpecial ſervice about his perſon, or by bearing ſome ſpecial office in his houſe, or in the field, which have knight's-ſervice and more in them, and theſe be called tenures by grand ſerjeanty. Alſo he provided upon the firſt gift of lands, to have revenues by continual ſervice of ploughing his land, repairing his houſes, parks, pales, caſtles, and the like. And ſometimes to a yearly proviſion of gloves, ſpurs, hawks, horſes, hounds, and the like; which kind of reſervations are called alſo tenures in chief, or *in capite* of the King, but they are not by knight's-ſervice, becauſe they required no perſonal ſervice, but ſuch things as the tenant may hire another to do, or provide for his money. And this tenure is called a tenure by ſocage *in capite*, the word *ſoca* ſignifying the plough; howbeit in this latter time, the ſervice of ploughing the land, and of harveſt works is turned into money-rent, for that the Kings do not keep their demeſne in their own hands, as they were wont to do; yet what lands were *de antiquo dominio coronae*, it well appeareth in the records of the exchequer called the

The inſtitution of ſocage *in capite*, and that it is now turned into money-rent.

* Aid-money to make the King's eldeſt ſon a knight, or to marry his eldeſt daughter, is likewiſe due to his Majeſty from every one of his tenants in knight's-ſervice, that hold by a whole fee 20 *s.* and from every tenant in ſocage, if his land be worth twenty pound *per ann.* 20 *s.*

† Eſcuage was likewiſe due unto the King from his tenant by knight's-ſervice: when his Majeſty made a voyage royal to war againſt another nation, thoſe of his tenants that did not attend him there for forty days with horſe and furniture fit for ſervice, were to be aſſeſſed in a certain ſum by act of parliament, to be paid unto his Majeſty; which aſſeſſment is called eſcuage.

book

book of *Doomſday*. And the tenants in ancient demeſne, have many immunities and privileges at this day, that in ancient times were granted unto thoſe tenants by the crown; the particulars whereof are too long to ſet down.

THESE tenures *in capite*, as well that by *ſocage*, as the others by knight's-ſervice, have this property; that the tenants cannot alien their lands without licence of the King: if they do, the King is to have a fine for the contempt, and may ſeize the land, and retain it until the fine be paid. And the reaſon is, becauſe the King would have a liberty in the choice of his tenant, ſo that no man ſhould preſume to enter into thoſe lands, and hold them (for which the King was to have thoſe ſpecial ſervices done him) without the King's leave; this licence and fine as it is now digeſted is eaſy and of courſe.

THERE is an office called the office of alienation, where any man may have a licence at a reaſonable rate, that is, at the third part of one year's value of the land moderately rated. A tenant *in capite* by knight's-ſervice or grand ſerjeanty, was reſtrained by ancient ſtatute, that he ſhould not give nor alien away more of his lands, than that with the reſt he might be able to do the ſervice due to the King; and this is now out of uſe.

Office of alienation.

A licence of alienation is the third part of one year's value of the land moderately rated.

AND to this tenure by knight's-ſervice in chief was incident, that the King ſhould have a certain ſum of money called *aid*, due, to be ratably levied amongſt all thoſe tenants proportionably to their lands, to make his eldeſt ſon a knight, or to marry his eldeſt daughter.

Aid, what?

Tenants by knight's-ſervice *in capite*, paid it to make the King's eldeſt ſon a knight, or to marry his eldeſt daughter.

AND it is to be noted that all thoſe that hold lands by the tenure of ſocage *in capite* (although not by knight's-ſervice) cannot alien without licence, and they are to ſue livery, and pay *primer ſeiſin*, but not to be in ward for body or land.

Tenants by ſocage *in capite*.

BY example and reſemblance of the King's policy in theſe inſtitutions of tenures, the great men and gentlemen of this realm did the like ſo near as they could; as for example, when the King had given to any of them two thouſand acres of land, this party purpoſing in this place to make a dwelling, or (as the old word is) his manſion-houſe, or his manor-houſe, did deviſe how he might make his land a complete habitation to ſupply him with all manner of neceſſaries; and for that purpoſe, he would give of the uttermoſt parts of thoſe two thouſand acres, 100 or 200 acres, or more or leſs, as he ſhould think meet, to one of his moſt truſty ſervants, with ſome reſervation of rent to find a horſe for the wars, and go with him when he went with the King to the wars, adding vow of homage, and the * oath of fealty, wardſhip, marriage, and relief. This relief is to pay five pound for every knight's fee, or after that rate for more or leſs at the entrance of every heir; which tenant ſo created and placed, was and is to this day called a tenant by knight's-ſervice, and not by his own perſon, but of his manors; of theſe he might make as many as he would. Then this lord would provide that the land which he was to keep for his own uſe, ſhould be ploughed, and his harveſt brought home, his houſe repaired, his park paled, and the like: and for that end he would give ſome leſſer parcels to ſundry others, of twenty, thirty, forty, or fifty acres: reſerving the ſervice of ploughing a certain quantity, or ſo many days of his land, and certain harveſt works or days in the harveſt to labour, or to repair the houſe, park pale, or otherwiſe, or to give him for his proviſion, capons, hens, pepper, cummin, roſes, gilliflowers, ſpurs, gloves, or the like: or to pay to him a certain rent, and to be

How manors were at firſt created.

Manors created by great men in imitation of the King in the inſtitutions of tenures. *A manere*, the word manor.

Knight's-ſervice tenure reſerved to common perſons. Relief is 5 *l.* to be paid by every tenant by knight's-ſervice to his lord, *&c.*

Socage tenure reſerved by the lord.

* Knight's-ſervice tenure created by the lord, is not a tenure by knight's-ſervice of the perſon of the lord, but of his manor.

ſworn to be his faithful tenant, which tenure was called a ſocage tenure, and is ſo to this day, howbeit moſt of the ploughing and harveſt ſervice are turned into money rents.

Relief of tenant in ſocage, one year's rent and no wardſhip, or other profit upon the dying of the tenant.

* THE tenants in ſocage at the death of every tenant were to pay relief, which was not as knight's-ſervice is, five pound a knight's fee: but it was, and ſo is ſtill, one year's rent of the land; and no wardſhip or other profit to the lord. The remainder of the two thouſand acres he kept to himſelf, which he uſed to manure by his bondmen, and appointed them at the courts of his manor how they ſhould hold it, making an entry of it into the roll of the remembrances of the acts of his court, yet ſtill in the lord's power to take it away; and therefore they were called tenants at will, by copy of court-roll; being in truth bond-men at the beginning: but having obtained freedom of their perſons, and gained a cuſtom by uſe of occupying their lands, they now are called copy-holders, and are ſo privileged, that the lord cannot put them out, and all through cuſtom. Some copy-holders are for lives, one, two, or three ſucceſſively; and ſome inheritances from heir to heir by cuſtom; and cuſtom ruleth theſe eſtates wholly, both for widows eſtates, fines, herriots, forfeitures, and all other things.

Villenage or tenure by copy of court-roll.

Court baron, with the uſe of it.

MANORS being in this ſort made at the firſt, reaſon was that the lord of the manor ſhould hold a court, which is no more than to aſſemble his tenants together at a time by him to be appointed; in which court he was to be informed by oath of his tenants, of all ſuch duties, rents, reliefs, wardſhips, copy-holds, or the like, that had happened unto him; which information is called a preſentment, and then his bailiff was to ſeiſe and diſtrain for thoſe duties if they were denied or with-holden, which is called a court baron: and herein a man may ſue for any debt or treſpaſs under forty ſhillings value, and the freeholders are to judge of the cauſe upon proof produced upon both ſides. And therefore the freeholders of theſe manors, as incident to their tenures, do hold by ſuit of court, which is to come to the court, and there to judge between party and party in thoſe petty actions; and alſo to inform the lord of duties, rents, and ſervices unpaid to him from his tenants. By this courſe it is diſcerned who be the lords of lands, ſuch as if the tenants die without heir, or be attainted of felony or treaſon, ſhall have the land by eſcheat.

Suit to the court of the lord incident to the tenure of the freeholders.

What attainders ſhall give the eſcheat to the lord. Attainders, 1. By judgment. 2. By verdict or confeſſion. 3. By outlawry, give the lands to the lord.

NOW concerning what attainders ſhall give the eſcheat to the land; it is to be noted, that it muſt either be by judgment of death given in ſome court of record againſt the felon found guilty by verdict, or confeſſion of the felony, or it muſt be by out-lawry of him.

Of an attainder by outlawry.

THE out-lawry groweth in this ſort; a man is indicted for felony, being not in hold, ſo as he cannot be brought in perſon to appear and to be tried, inſomuch that proceſs of *capias* is therefore awarded to the ſheriff, who not finding him, returneth, *non eſt inventus in balliva mea*; and thereupon another *capias* is awarded to the ſheriff; who likewiſe not finding him maketh the ſame return: then a writ called an *exigent* is directed to the ſheriff, commanding him to proclaim him in his county-court five ſeveral court days, to yield his body; which if the ſheriff do, and the party yield not his body, he is ſaid, by the default, to be out-lawed, the coroners there adjudging him out-lawed, and the ſheriff making the return of the proclamations, and of the judgment of the coroners upon the backſide of the writ. This is an attainder of felony, whereupon the offender doth forfeit his lands by an eſcheat to the lord of whom they are holden.

* All money and eſcuage money is likewiſe due unto the lords of their tenants.

BUT note, that a man found guilty of felony by verdict or confeſſion, and praying his clergy, and thereupon reading as a clerk, and ſo burnt in the hand and diſcharged, is not attainted; becauſe he by his clergy preventeth the judgment of death, and is called a clerk convict, who loſeth not his lands, but all his goods, chattels, leaſes, and debts. Prayer of the clergy.

So a man indicted, that will not anſwer nor put himſelf upon trial, although he be by this to have judgment of preſſing to death, yet he doth forfeit no lands, but goods, chattels, leaſes, and debts, except his offence be treaſon, and then he forfeiteth his lands to the crown. He that ſtandeth mute forfeiteth no lands, except for treaſon.

So a man that killeth himſelf ſhall not loſe his lands, but his goods, chattels, leaſes, and debts. So of thoſe that kill others in their own defence, or by misfortune. He that killeth himſelf forfeiteth but his chattels.

A man that being purſued for felony, and flieth for it, loſes his goods for his flying, although he return and is tried, and found not guilty of the fact. Flying for felony, a forfeiture of goods.

So a man indicted of felony, if he yield not his body to the ſheriff until after the exigent of proclamation is awarded againſt him, this man doth forfeit all his goods for his long ſtay, although he be not found guilty of the felony; but none is attainted to loſe his lands, but only ſuch as have judgments of death by trial upon verdict, or their own confeſſion, or that they be by judgment of the coroner's out-lawed, as before. He that yieldeth his body upon the exigent for felony, forfeiteth his goods.

BESIDES the eſcheats of lands to the lords of whom they be holden for lack of heirs, and by attainder for felony (which only do hold place in fee-ſimple lands) there are alſo forfeiture of lands to the crown by attainder of treaſon; as namely, if one that hath entailed lands commit treaſon, he forfeiteth the profits of the lands for his life to the crown, but not to the lord. Lands entailed eſcheat to the King for treaſon. Stat. 26 H.S.

AND if a man having an eſtate for life of himſelf, or of another, commit treaſon or felony, the whole eſtate is forfeited to the crown, but no eſcheat to the lord. Tenant for life committeth treaſon or felony, there ſhall be no eſcheat to the lord.

BUT a copy-hold, for fee-ſimple, or for life, is forfeited to the lord, and not to the crown; and if it be entailed, the lord is to have it during the life of the offender only, and then his heir is to have it.

THE cuſtom of *Kent* is, that Gavelkind land is not forfeitable nor eſcheatable for felony: for they have an old ſaying; the father to the bough, and the ſon to the plough.

IF the huſband was attainted, the wife was to loſe her thirds in caſes of felony and treaſon, but yet ſhe is no offender; but at this day it is holden by ſtatute law, that ſhe loſeth them not for the huſband's felony. The relation of theſe forfeits are theſe: The wife loſeth no dower, notwithſtanding the huſband be attainted of felony.

1. THAT men attainted of felony or treaſon, by verdict or confeſſion, do forfeit all the lands they had at the time of their offence committed; and the King or the lord, whoſoever of them hath the eſcheat or forfeiture, ſhall come in and avoid all leaſes, ſtatutes, or conveyances done by the offender, at any time ſince the offence done. And ſo is the law clear alſo, if a man be attainted for treaſon by out-lawry: but upon attainder of felony by out-lawry, it hath been much doubted by the law-books, whether the lord's title by eſcheat ſhall relate back to the time of the offence done, or only to the date of teſte of the writ of exigent for proclamation, whereupon he is out-lawed; howbeit at this day it is ruled, that it ſhall reach back to the time of the fact; but for goods, chattels, and debts, the King's title Attainder in felony or treaſon by verdict, confeſſion or out-lawry, forfeiteth all they had from the time of the offence committed.

ſhall

And so it is upon an attainder of outlawry; otherwise it is in the attainder by verdict, confession, and outlawry, as to their relation for the forfeiture of goods and chattels.

shall look no further back than to those goods, the party attainted by verdict or confession, had at the time of the verdict and confession, given or made, and in outlawries at the time of the exigent, as well in treasons as felonies: wherein it is to be observed, that upon the parties first apprehension, the King's officers are to seize all the goods and chattels, and preserve them together, dispending only so much out of them, as is fit for the sustentation of the person in prison, without any wasting, or disposing of them until conviction; and then the property of them is in the crown, and not before.

The King's officers to seize a felon's goods and chattels.

It is also to be noted, that persons attainted for felony or treason, have no capacity in them to take, obtain or purchase, save only to the use of the King, until the party be pardoned. Yet the party giveth not back his lands or goods, without a special patent of restitution, which cannot restore the blood without an act of parliament. So if a man have a son, and then is attainted of felony or treason, and pardon'd, and purchaseth lands, and then hath issue another son, and dieth; the son he had before he had his pardon, although he be his eldest son, and the patent have the words of restitution to his lands, shall not inherit, but his second son shall inherit them, and not the first; because the blood is corrupted by the attainder, and cannot be restored by patent alone, but by act of parliament. And if a man have two sons, and the eldest is attainted in the life of his father, and dieth without issue, the father living, the second son shall inherit the father's lands; but if the eldest son have any issue, though he die in the life of his father, then neither the second son, nor the issue of the eldest, shall inherit the father's lands, but the father shall there be accounted to die without heir; and the land shall escheat, whether the eldest son have issue or not, afterward or before, though he be pardoned after the death of his father.

A person attainted may purchase, but it shall be to the King's use.

There can be no restitution in blood without act of parliament; but a pardon enableth a man to purchase, and the heir begotten after shall inherit those lands.

Property of lands by conveyance, is first distributed into estates, for years, for life, in tail, and fee-simple.

* Property of land by conveyance divided into, 1. Estates in fee. 2. In tail. 3. For life. 4. For years

† Leases for years, they go to the executors, and not to the heirs.

Leases are to be forfeited by attainder. 1. In treason. 2. Felony. 3. Premunire. 4. By killing himself. 5. For flying. 6. Standing out, &c. 7. By conviction. 8. Petty larceny. 9. Going beyond the sea without licence.

These * estates are created by word, by writing, or by record. For estates of years, which are commonly called leases for years, they are thus made; where the owner of the land agreeth with the other by word of mouth, that the other shall have, hold, and enjoy the land, to take the profits thereof for a time certain of years, months, weeks or days, agreed between them; and this is called a lease parol: such a lease may be made by writing poll, or indented of demise, grant, and to farm let, and so also by fine of record; but whether any rent be reserved or no, it is not material. Unto these † leases there may be annexed such exceptions, conditions, and covenants, as the parties can agree on. They are called chattels real, and are not inheritable by the heirs, but go to the executors, and administrators, and be saleable for debts in the life of the owner, or in the executors or administrators hands by writs of execution upon statutes, recognizances, judgments of debts or damages. They be also forfeitable to the crown by outlawry, by attainder for treason, felony, or premunire, killing himself, flying for felony, although not guilty of the fact, standing out, or refusing to be tried by the county, by conviction of felony, by verdict without judgment, petty-larceny, or going beyond the sea without licence.

These are forfeitable to the crown, in like manner as leases for years; *viz.* interest gotten in other mens lands by extending for debt upon judgment

in

in any court of record, ſtatute merchant, ſtatute ſtaple, recognizances; which being upon ſtatutes, are called tenants by ſtatute merchant, or ſtaple, the other tenants by *elegit*, and by wardſhip of body and lands: for all theſe are called chattels real, and go to the executors and adminiſtrators, and not to the heirs; and are ſaleable and forfeitable as leaſes for years are.

Extents upon ſtat. ſtaple, merchant, or elegit. Wardſhip of body and lands are chattels, and forfeitable.

Leaſes for lives are alſo called free-holds: they may alſo be made by word or writing. There muſt be livery and ſeiſin given at the making of the leaſe by him, whom we call the leſſor; who cometh to the door, backſide, or garden, if it be a houſe, if not, then to ſome part of the land, and there he expreſſeth, that he doth grant unto the taker called the leſſee for term of his life; and in ſeiſin thereof, he delivereth to him a turf, twig, or ring of the door: and if the leaſe be by writing, then commonly there is a note written on the backſide of the leaſe, with the names of thoſe witneſſes who were preſent at the time of the livery of ſeiſin made. This eſtate is not ſaleable by the ſheriff for debt, but the land is to be extended for a yearly value, to ſatisfy the debt. It is not forfeitable by out-lawry, except in caſes of felony, nor by any of the means before mentioned, of leaſes for years; ſaving in an attainder for felony, treaſon, premunire, and then only to the crown, and not to the lords by eſcheat.

Leaſe for life how forfeitable.

Indorſement of livery, &c.

Leaſe for life not to be ſold by the ſheriff for debt, but extended at a yearly value.

And though a nobleman or other have liberty by charter, to have all felons goods; yet a tenant holding for term of life, being attainted of felony, doth forfeit unto the King, and not to this nobleman.

A man that hath *bona felon.* by charter, ſhall not have the eſtate, if leſſee for life be attainted.

If a man have an eſtate in lands for another man's life, and dieth; this land cannot go to his heir, nor to his executors, but to the party that firſt entreth; and he is called an occupant, as before hath been declared.

Occupant.

A leaſe for years or for life may be made alſo by fine of record, or bargain and ſale, or covenant, to ſtand ſeiſed upon good conſiderations of marriage, or blood; the reaſons whereof are hereafter expreſſed.

Entails of lands are created by a gift, with livery and ſeiſin to a man, and to the heirs of his body; this word (body) making the entail, may be demonſtrated and reſtrained to the males or females, heirs of their two bodies, or of the body of either of them, or of the body of the grandfather or father.

Of eſtate tails, and how ſuch an eſtate may be limited.

By the ſtat. of *Weſt.* 1. made in *Ed.* I's time, eſtates in tail were ſo ſtrengthened, that they were not forfeitable by any attainder.

Entails of lands began by a ſtatute made in *Ed.* I's time, by which alſo they are ſo much ſtrengthened, as that the tenant in tail could not put away the land from the heir by any act of conveyance or attainder; nor let it, nor incumber it, longer than his own life.

But the inconvenience thereof was great, for by that means, the land being ſo ſure tied upon the heir as that his father could not put it from him, it made the ſon to be diſobedient, negligent, and waſtful, often marrying without the father's conſent, and to grow inſolent in vice, knowing, that there could be no check of diſinheriting him. It alſo made the owners of the land leſs fearful to commit murders, felonies, treaſons, and manſlaughters; for that they knew none of theſe acts could hurt the heir of his inheritance. In hindred men that had entailed lands, that they could not make the beſt of their lands by fine and improvement, for that none upon ſo uncertain an eſtate as for term of his own life, would give him a fine of any value, nor lay any great ſtock upon the land, that might yield rent improved.

The great inconvenience that enſued thereof.

Lastly, thoſe entails did defraud the crown, and many ſubjects of their debts; for that the land was not liable longer than his own life-time; which cauſed, that the King could not ſafely commit any office of account to ſuch whoſe

The prejudice the crown received thereby.

whoſe lands were entailed, nor other men truſt them with loan of money.

The ſtat. 4 *H.* VII and 32 *H.* VIII. to bar eſtates tail by fine.

THESE inconveniencies were all remedied by acts of parliament; as namely, by acts of parliament later than the act of entails, made 4 *H.* VII. 32 *H.* VIII. a tenant in tail may diſinherit his ſon by a fine with proclamation, and may by that means alſo make it ſubject to his debts and ſales.

26 *H.* VIII. 32 *H* VIII.

BY a ſtatute made 26 *H.* VIII. a tenant in tail doth forfeit his lands for treaſon; and by another act of parliament, 32 *H.* VIII. he may make leaſes good againſt his heir for one and twenty years, or three lives; ſo that it be not of his chief houſes, lands, or demeſne, or any leaſe in reverſion, nor leſs rent reſerved than the tenants have paid moſt part of one and twenty years before, nor have any manner of diſcharge for doing waſtes and ſpoils: by a ſtatute made 33 *H.* VIII. tenants of entailed lands are liable to the King's debts by extent, and by ſtatutes made 13 and 39 *Eliz.* they are ſaleable for the arrearages upon his account for his office; ſo that now it reſteth, that entailed lands have two privileges only, which be theſe. Firſt, not to be forfeited for felonies. Secondly, not to be extended for debts after the parties death, except the entails be cut off by fine and recovery.

33 *H.* VIII. 13 & 39 *Eliz.* entails two privileges; 1. Not forfeitable for felony. 2. Not extendable for the debts of the party after his death: proviſo, not to exclude his next heir. If he do, to forfeit his eſtate, and the next heir muſt enter.

BUT it is to be noted, that ſince theſe notable ſtatutes and remedies provided by ſtatutes, to dock entails, there is ſtarted up a deviſe called perpetuity, which is an entail with an addition of a proviſo conditional, tied to his eſtate, not to put away the land from his next heir; and if he do, to forfeit his own eſtate. Which perpetuities, if they ſhould ſtand, would bring in all the former inconveniencies ſubject to entails, that were cut off by the former mentioned ſtatutes, and far greater; for by the perpetuity, if he that is in poſſeſſion ſtart away never ſo little, as in making a leaſe, or ſelling a little quillet, forgetting after two or three deſcents, as often they do, how they are tied; the next heir muſt enter, who peradventure is his ſon, his brother, uncle, or kinſman: and this raiſeth unkind ſuits, ſetting all that kindred at jars, ſome taking one part, ſome another, and the principal parties waſting their time and money in ſuits of law. So that in the end they are both conſtrained by neceſſity to join in a ſale of the land, or a great part of it, to pay their debts, occaſioned through their ſuits: and if the chief of the family for any good purpoſe of well ſeating himſelf, by ſelling that which lieth far off, to buy that which is near, or for the advancement of his daughters or younger ſons, ſhould have reaſonable cauſe to ſell, this perpetuity, if it ſhould hold good, reſtraineth him. And more than that, where many are owners of inheritance of land not entailed, may, during the minority of his eldeſt ſon, appoint the profits to go to the advancement of the younger ſons and daughters, and pay debts; but by entails and perpetuities, the owners of theſe lands cannot do it, but they muſt ſuffer the whole to deſcend to the eldeſt ſon, and ſo to come to the crown by wardſhip all the time of his infancy.

Of a perpetuity, which is an entail with an addition.

Theſe perpetuities would bring in all the former inconveniencies of eſtates tail.

The inconveniencies of thoſe perpetuities.

Quære, whether it be better to reſtrain men by theſe perpetuities from alienations, or to hazard the undoing of houſes by unthrifty poſterity.

WHEREFORE, ſeeing the dangerous times and untowardly heirs, they might prevent thoſe miſchiefs of undoing their houſes, by conveying the land from ſuch heirs, if they were not tied to the ſtake by thoſe perpetuities, and reſtrained from forfeiting to the crown, and diſpoſing it to their own, or to their children's good; therefore it is worthy of conſideration, whether it be better for the ſubject and ſovereign to have the lands ſecured to mens names and bloods by perpetuities, with all the inconveniencies abovementioned, or to be in hazard of undoing his houſe by unthrifty poſterity.

THE laſt and greateſt eſtate of lands is fee-ſimple, and beyond this there is none of the former for lives, years, or entails; but beyond them is fee-ſimple. For it is the greateſt, laſt and uttermoſt degree of eſtates in land; therefore he that maketh a leaſe for life, or a gift in tail, may appoint a remainder when he maketh another for life or in tail, or to a third in fee-ſimple; but after a fee-ſimple he can limit no other eſtate. And if a man do not diſpoſe of the fee-ſimple by way of remainder, when he maketh the gift in tail, or for lives, then the fee-ſimple reſteth in himſelf as a reverſion. The difference between a reverſion and a remainder is this. The remainder is always a ſucceeding eſtate, appointed upon the gifts of a precedent eſtate at the time when the precedent is appointed. But the reverſion is an eſtate left in the giver, after a particular eſtate made by him for years, life, or entail; where the remainder is made with the particular eſtates, then it muſt be done by deeds in writing, with livery and ſeiſin, and cannot be by words; and if the giver will diſpoſe of the reverſion after it remaineth in himſelf, he is to do it by writing, and not by word, and the tenant is to have notice of it, and to atturn to it, which is to give his aſſent by word, or paying rent, or the like; and except the tenant will thus atturn, the party to whom the reverſion is granted cannot have the reverſion, neither can he compel him by any law to atturn, except the grant of the reverſion be by fine; and then he may by writ provided for that purpoſe: and if he do not purchaſe that writ, yet by the fine the reverſion ſhall paſs; and the tenant ſhall pay no rent, except he will himſelf, nor be puniſhed for any waſte in houſes, woods, *&c.* unleſs it be granted by bargain and ſale by indenture enrolled; theſe fee-ſimple eſtates lie open to all perils of forfeitures, extents, incumbrances and ſales.

The laſt and greateſt eſtate in land is fee-ſimple.

A remainder cannot be limited upon an eſtate in fee-ſimple.

The difference between a remainder and a reverſion.

A reverſion cannot be granted by word.

Atturnment muſt be had to the grant of the reverſion.

The tenant not compelable to atturn, but where the reverſion is granted by fine.

LANDS are conveyed by theſe ſix means; firſt, by feoffment, which is, where by deed lands are given to one and his heirs, and livery and ſeiſin made according to the form and effect of the deed; if a leſſer eſtate than fee-ſimple be given, and livery of ſeiſin made, it is not called a feoffment, except the fee-ſimple be conveyed, but is otherwiſe called a leaſe for life or gift in tail as above-mentioned.

Lands may be conveyed, 1. By feoffment. 2. By fine. 3. By recovery. 4. By uſe. 5. By covenant. 6. By will.

2. A fine is a real agreement, beginning thus, *Haec eſt finalis concordia, &c.* This is done before the King's judges in the court of common-pleas, concerning lands that a man ſhould have from another to him and his heirs, or to him for his life, or to him and the heirs males of his body, or for years certain, whereupon rent may be reſerved, but no condition or covenants. This fine is a record of great credit; and upon this fine are four proclamations made openly in the common-pleas; that is, in every term one, for four terms together; and if any man having right to the ſame, make not his claim within five years after the proclamations ended, he loſeth his right for ever, except he be an infant, a woman covert, a mad-man, or beyond the ſeas, and then his right is ſaved; ſo that the claim be within five years after full age, the death of her huſband, recovery of his wits, or return from beyond the ſeas. This fine is called a feoffment of record, becauſe that it includeth all the feoffment doth, and worketh farther of its own nature, and barreth entails peremptorily, whether the heir doth claim within five years or not, if he claim by him that levied the fine.

What a fine is, and how lands may be conveyed hereby.

Five years non-claim barreth not, 1. An infant. 2. Feme covert. 3. Madman. 4. Beyond ſea.

Fine is a feoffment of record.

3. RECOVERIES are where for aſſurances of lands the parties do agree, that one ſhall begin an action real againſt the other, as though he had good right to the land, and the other ſhall not enter into defence againſt it, but allege that he bought the land of *I. H.* who had warranted unto him, and pray

What recoveries are.

that

that *I. H.* may be called in to defend the title, which *I. H.* is one of the criers of the common-pleas, and is called the common-vouchee. This *I. H.* ſhall appear and make as if he would defend it, but ſhall pray a day to be aſſigned him in his matter of defence; which being granted him, at the day he maketh default, and thereupon the court is to give judgment againſt him; which cannot be for him to loſe his lands, becauſe he hath it not, but the party that he hath ſold it to hath that, who vouched him to warrant it.

Common vouchee one o the criers of the court.

THEREFORE the demandant who hath no defence made againſt it, muſt have judgment to have the land againſt him that he ſued (who is called the tenant) and the tenant is to have judgment againſt *I. H.* to recover in value ſo much land of his, where in truth he hath none, nor never will. And by this device, grounded upon the ſtrict principles of law, the firſt tenant loſeth the land, and hath nothing for it; but it is by his own agreement for aſſurance to him that brought it.

Judgment for the demandant againſt the tenant in tail.

Judgment for tenant to recover ſo much land in value of the common vouchee.

THIS recovery barreth entails, and all remainders and reverſions that ſhould take place after the entails, ſaving where the King is giver of the entail, and keepeth the reverſion to himſelf; then neither the heir, nor the remainder, nor reverſion, is barred by the recovery.

A recovery barreth an eſtate tail and all reverſions and remainders thereupon.

THE reaſon why the heirs, remainders, and reverſions are thus barred, is becauſe in ſtrict law the recompence adjudged againſt the crier that was vouchee, is to go in ſucceſſion of eſtate as the land ſhould have done, and then it was not reaſon to allow the heir the liberty to keep the land it ſelf, and alſo to have recompence; and therefore he loſeth the land, and is to truſt to the recompence.

The reaſon why a common recovery barreth thoſe in remainder and reverſions.

THIS ſleight was firſt invented, when entails fell out to be ſo inconvenient as is before declared, ſo that men made no conſcience to cut them off, if they could find law for it. And now by uſe, thoſe recoveries are become common aſſurances againſt entails, remainders, and reverſions, and are the greateſt ſecurity purchaſers have for their money; for a fine will bar the heir in tail, and not the remainder, nor reverſion, but a common recovery will bar them all.

The many inconveniences of eſtates in tail brought in theſe recoveries, which are made now common conveyances and aſſurances for land.

UPON feoffments and recoveries, the eſtate doth ſettle as the uſe and intent of the parties is declared by word or writing, before the act was done: as for example, if they make a writing that one of them ſhall levy a fine, make a feoffment, or ſuffer a common recovery to the other; but the uſe and intent is, that one ſhould have it for his life, and after his deceaſe a ſtranger to have it in tail, and then a third in fee-ſimple. In this caſe the land ſettleth in an eſtate according to the uſe and intent declared. And that by reaſon of the ſtatute made 27 *H.* VIII. conveying the land in poſſeſſion to him that hath intereſt in the uſe, or intent of the fine, feoffment, or recovery, according to the uſe and intent of the parties.

Upon fines, feoffments, and recoveries, the eſtate doth ſettle according to the intent of the parties.

UPON this ſtatute is likewiſe grounded the fourth and fifth of the ſix conveyances, *viz.* bargains and ſales, and covenants to ſtand ſeiſed to uſes; for this ſtatute, whereſoever it findeth an uſe, conjoineth the poſſeſſion to it, and turneth it into like quality of eſtate, condition, rent, and the like, as the uſe hath.

Bargains, ſales, and covenants to ſtand ſeiſed to a uſe, are all grounded upon one ſtatute.

4. THE uſe is but the equity and honeſty to hold the land *in conſcientia boni viri*. As for example; I and you agree that I ſhall give you money for your land, and you ſhall make me aſſurance of it. I pay you the money, but you made me no aſſurance of it. Here although the eſtate of the land be ſtill in you, yet the equity and honeſty to have it is with me; and this equity is called

What a uſe is.

called the uſe, upon which I had no remedy but in chancery, until this ſtatute was made of 27 *H.* VIII. and now this ſtatute conjoineth and conveyeth the land to him that hath the uſe. I for my money paid to you, have the land it ſelf, without any other conveyance from you; and it is called a bargain and ſale.

Before 27 *H.* 8. there was no remedy for a uſe, but in chancery.

But the parliament that made that ſtatute did foreſee, that it would be miſchievous that mens lands ſhould ſo ſuddenly upon the payment of a little money be conveyed from them, peradventure in an alehouſe or a tavern upon ſtrainable advantages, did therefore gravely provide another act in the ſame parliament, that the land upon payment of this money ſhould not paſs away, except there were a writing indented, made between the ſaid two parties, and the ſaid writing alſo within ſix months inrolled in ſome of the courts at *Weſtminſter*, or in the ſeſſions-rolls in the ſhire where the land lyeth; unleſs it be in cities or corporate towns where they did uſe to enroll deeds, and there the ſtatute extendeth not.

The ſtat. of 27 *H.* 8. doth not paſs land upon the payment of money without a deed indented and enrolled.

The ſtat. of 27 *H.* 8. extendeth not to places where they did enroll deeds.

5. The fifth conveyance is a covenant to ſtand ſeiſed to uſes: it is in this ſort; a man that hath a wife and children, brethren, and kinsfolks, may by writing under his hand and ſeal agree, that for their or any of their preferment he will ſtand ſeiſed of his lands to their uſes, either for life, in tail, or fee, ſo as he ſhall ſee cauſe; upon which agreement in writing, there ariſeth an equity or honeſty, that the land ſhould go according to thoſe agreements; nature and reaſon allowing theſe proviſions; which equity and honeſty is the uſe. And the uſe being created in this ſort, the ſtatute of 27 *H.* VIII. before mentioned, conveyeth the eſtate of the land, as the uſe is appointed.

A covenant to ſtand ſeiſed to a uſe.

Upon an agreement in writing to ſtand ſeiſed to the uſe of any of his kindred, a uſe may be created, *&c.*

And ſo this covenant to ſtand ſeiſed to uſes, is at this day, ſince the ſaid ſtatute, a conveyance of land; and with this difference from a bargain and ſale, in that this needeth no enrollment as a bargain and ſale doth, nor needeth it to be in writing indented, as bargain and ſale muſt: and if the party to whoſe uſe he agreeth to ſtand ſeiſed of the land, be not wife, or child, couſin, or one that he meaneth to marry, then will no uſe riſe, and ſo no conveyance; for although the law alloweth ſuch weighty conſiderations of marriage and blood to raiſe uſes, yet doth it not admit ſo trifling conſiderations, as of acquaintance, ſchooling, ſervices, or the like.

A covenant to ſtand ſeiſed to a uſe needeth no enrollment as a bargain and ſale to a uſe doth, *&c.*

But where a man maketh an eſtate of his land to others, by fine, feoffment, or recovery, he may then appoint the uſe to whom he liſteth, without reſpect of marriage, kindred, or other things; for in that caſe his own will and declaration guideth the equity of the eſtate. It is not ſo when he maketh no eſtate, but agreeth to ſtand ſeiſed, nor when he hath taken any thing, as in the caſes of bargain and ſale, and covenant to ſtand ſeiſed to uſes.

Upon a fine, feoffment, or recovery a man may limit the uſe to whom he liſteth, without conſideration of blood, or money. Otherwiſe, in a bargain and ſale, or covenant.

6. The laſt of the ſix conveyances is a will in writing, which courſe of conveyance was firſt ordained by a ſtatute made 32 *H.* VIII. before which ſtatute no man might give land by will, except it were in a borough town, where there was an eſpecial cuſtom that men might give their lands by will; as in *London*, and many other places.

Of the conveyance of land by will.

The not diſpoſing of lands by will, was thought to be a defect at the common law.

The not giving of land by will, was thought to be a defect at common law, that men in wars, or ſuddenly falling ſick, had no power to diſpoſe of their lands, except they could make a feoffment, or levy a fine, or ſuffer a recovery; which lack of time would not permit: and for men to do it by theſe means, when they could not undo it again, was hard; beſides, even to the laſt hour of death, mens minds might alter upon further proofs of their

children or kindred, or encreaſe of children or debt, or defect of ſervants or friends.

The courſe that was invented before the ſtat. of 32 *H.* 8. firſt gave power to deviſe lands by will, was a conveyance of lands to feoffees in truſt, to ſuch perſons as they ſhould declare in their will.

For which cauſe, it was reaſon that the law ſhould permit him to reſerve to the laſt inſtant the diſpoſing of his lands, and to give him means to diſpoſe of it, which ſeeing it did not fitly ſerve, men uſed this deviſe.

They conveyed their full eſtates of their lands in their good health, to friends in truſt, properly called feoffees in truſt; and then they would by their wills declare how their friends ſhould diſpoſe of their lands; and if thoſe friends would not perform it, the court of chancery was to compel them by reaſon of truſt; and this truſt was called the uſe of the land, ſo as the feoffees had the land, and the party himſelf had the uſe; which uſe was in equity, to take the profits for himſelf, and that the feoffees ſhould make ſuch an eſtate as he ſhould appoint them; and if he appointed none, then the uſe ſhould go to the heir, as the eſtate it ſelf of the land ſhould have done; for the uſe was to the eſtate like a ſhadow following the body.

The inconveniences of putting land into uſe.

By this courſe of putting lands into uſe there were many inconveniences, as this uſe which grew firſt for a reaſonable cauſe, *viz.* to give men power and liberty to diſpoſe of their own, was turned to deceive many of their juſt and reaſonable rights; as namely, a man that had cauſe to ſue for his land, knew not againſt whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds; the huſband of being tenant by courteſy; the lord of his wardſhip, relief, heriot, and eſcheat; the creditor of his extent for debt; the poor tenant of his leaſe; for theſe rights and duties were given by law from him that was owner of the land, and none other; which was now the feoffee of truſt; and ſo the old owner, which we call the feoffor, ſhould take the profits, and leave the power to diſpoſe of the land at his diſcretion to the feoffee; and yet he was not ſuch a tenant as to be ſeiſed of the land, ſo as his wife could have dower, or the lands be extended for his debts, or that he could forfeit it for felony or treaſon, or that his heir could be in ward for it, or any duty of tenure fall to the lord by his death, or that he could make any leaſes of it.

The frauds of conveyances to uſe, by degrees of time, as they increaſed, were remedied by the ſtatutes.

Which frauds by degrees of time as they encreaſed, were remedied by divers ſtatutes; as namely, by a ſtatute of 1 *H.* VI. and 4 *H.* VIII. it was appointed that the action may be tried againſt him which taketh the profits, which was then *ceſtuy que uſe* by a ſtatute made 1 *R.* III. Leaſes and eſtates made by *ceſtuy que uſe* are made good, and eſtates by him acknowledged. 4 *H.* VII. the heir of *ceſtuy que uſe* is to be in ward; 16 *H.* VIII. the lord is to have relief upon the death of any *ceſtuy que uſe.*

27 *H.* 8. taking away all uſes, reduceth the law to the ancient form of conveyances of land, by feoffment, fine, and recovery.

Which frauds nevertheleſs multiplying daily, in the end 27 *H.* VIII. the parliament purpoſing to take away all thoſe uſes, and reducing the law to the ancient form of conveying of lands by publick livery of ſeiſin, fine, and recovery, did ordain, that where lands were put in truſt or uſe, there the poſſeſſion and eſtate ſhould be preſently carried out of the friends in truſt, and ſettled and inveſted on him that had the uſes, for ſuch term and time as he had the uſe.

In what manner the ſtat. of 32 *H.* 8. giveth power to diſpoſe of lands by will.

By this ſtatute of 27 *H.* VIII. the power of diſpoſing land by will, is clearly taken away amongſt thoſe frauds; whereupon 32 *H.* VIII. another ſtatute was made, to give men power to give lands by will in this ſort. Firſt, it muſt be by will in writing. Secondly, he muſt be ſeiſed of an eſtate in fee-ſimple; for tenant for another man's life, or tenant in tail, cannot give land by will; by that ſtatute 32 *H.* VIII. he muſt be ſolely ſeiſed, and not jointly with another; and then being thus ſeiſed, for all the land he holdeth in

ſocage tenure, he may give it by will, except he hold any piece of land *in capite* by knight's-ſervice of the King; and then laying all together, he can give but two parts by will: for the third part of the whole, as well in ſocage as *in capite*, muſt deſcend to the heir, to anſwer wardſhip, livery, and primer ſeiſin to the crown.

If a man be ſeiſed of *capite* lands and ſocage, he cannot deviſe but two parts of the whole. The third part muſt deſcend to the heir to anſwer wardſhip, livery and ſeiſin to the crown.

And ſo if he hold lands by knight's-ſervice of a ſubject, he can deviſe of the land but two parts, and the third the lord by wardſhip, and the heir by deſcent is to hold.

And if a man that hath three acres of land holden *in capite* by knight's-ſervice, do make a jointure to his wife of one, and convey another to any of his children, or to friends, to take the profits, and to pay his debts, or legacies, or daughters portions, then the third acre or any part thereof he cannot give by will, but muſt ſuffer it to deſcend to the heir, and that muſt ſatisfy wardſhip.

A conveyance by deviſe of *capite* lands to the wife for her jointure, &c. void for a third part, by 32 *H.* VIII.

Yet a man having three acres as before, may convey all to his wife, or children by conveyance in his life-time, as by feoffment, fine, recovery, bargain and ſale, or covenant to ſtand ſeiſed to uſes, and diſinherit the heir. But if the heir be within age when his father dieth, the King or other lord ſhall have that heir in ward, and ſhall have one of the three acres during the wardſhip, and to ſue livery and ſeiſin. But at full age the heir ſhall have no part of it, but it ſhall go according to the conveyance made by the father.

But a conveyance by act executed in the life-time of the party of ſuch lands to ſuch uſes is not void; but if the heir be within age, he ſhall have one third to be in ward.

It hath been debated how the thirds ſhall be ſet forth. For it is the uſe, that all lands which the father leaveth to deſcend to the heir, being fee-ſimple, or in tail, muſt be part of the thirds; and if it be a full third, then the king, nor heir, nor lord, can intermeddle with the reſt; if it be not a full third, yet they muſt take it ſo much as it is, and have a ſupply out of the reſt.

Entailed lands part of the thirds. The King nor lord cannot intermeddle if a full third part be left to deſcend to the heir.

This ſupply is to be taken thus; if it be the King's ward, then by a commiſſion out of the court of wards, whereupon a jury by oath muſt ſet forth ſo much as ſhall make up the thirds, except the officers of the court of wards can otherwiſe agree with the parties. If there be no wardſhip due to the King, then the other lord is to have this ſupply by a commiſſion out of the chancery, and jury thereupon.

The manner of making ſupply, when the part of the heir is not a full third.

But in all thoſe caſes, the ſtatutes do give power to him that maketh the will, to ſet forth and appoint of himſelf which lands ſhall go for thirds, and neither King nor lord can refuſe it. And if it be not enough, yet they muſt take that in part, and only have a ſupply in manner as before is mentioned out of the reſt.

The ſtatutes give power to the teſtator to ſet out the third himſelf, &c.

Property in goods.

Of the ſeveral ways whereby a man may get property in goods or chattels.

1. By gift.
2. By ſale.
3. By ſtealing.
4. By waving.
5. By ſtraying.
6. By ſhipwreck.
7. By forfeiture.
8. By executorſhip.
9. By adminiſtration.
10. By legacy.

1. *Property*

1. *Property by gift.*

A deed of gift of goods to deceive his creditors is void againſt them, but good againſt the executors, adminiſtrators, or vendee of the party himſelf.

BY gift, the property of goods may be paſſed by word or writing; but if there be a general deed of gift made of all his goods, this is ſuſpicious to be done upon fraud, to deceive the creditors.

AND if a man who is in debt make a deed of gift of all his goods to protect the taking of them in execution for his debt, this deed of gift is void, as againſt thoſe to whom he ſtood indebted; but as againſt himſelf, his own executors or adminiſtrators, or any man to whom afterwards he ſhall ſell or convey them, it is good.

2. *By ſale.*

What is a ſale *bona fide* and what not, when there is a private reſervation of truſt between the parties.

PROPERTY in goods by ſale. By ſale, any man may convey his own goods to another; and although he may fear execution for debts, yet he may ſell them out-right for money at any time before the execution ſerved; ſo that there be no reſervation of truſt between them, that repaying the money, he ſhall have the goods again; for that truſt in ſuch caſe, doth prove plainly a fraud, to prevent the creditors from taking the goods in execution.

3. *By theft or taking in jeſt.*

How a ſale in market ſhall be a bar ro the owner.

PROPERTY of goods by theft, or taking in jeſt. If any man ſteal my goods or chattels, or take them from me in jeſt, or borrow them of me, or as a treſpaſſer or felon carry them to the market or fair, and ſell them, this ſale doth bar me of the property of my goods, ſaving, that if he be a horſe he muſt be ridden two hours in the market or fair, between ten and five a clock, and tolled for in the toll-book, and the ſeller muſt bring one to avouch his ſale, known to the toll-book-keeper, or elſe the ſale bindeth me not. And for any other goods, where the ſale in a market or fair ſhall bar the owner, being not the ſeller of his property, it muſt be ſale in a market or fair, where uſually things of that nature are ſold. As for example; if a man ſteal a horſe, and ſell him in *Smithfield*, the true owner is barred by this ſale; but if he ſell the horſe in *Cheapſide*, *Newgate* or *Weſtminſter* market, the true owner is not barred by this ſale; becauſe theſe markets are uſual for fleſh, fiſh, *&c.* and not for horſes.

Of markets; and what markets ſuch a ſale ought to be made in.

SO whereas by the cuſtom of *London* in every ſhop there is a market all the days of the week, ſaving *Sundays* and *Holidays*; yet if a piece of plate, or jewel that is loſt, or chain of gold or pearl that is ſtolen or borrowed, be ſold in a draper's or ſcrivener's ſhop, or any other but a goldſmith's, this ſale barreth not the true owner, *& ſic in ſimilibus.*

The owner may ſeiſe his goods after they are ſtolen.

YET by ſtealing alone of goods, the thief getteth not ſuch property, but that the owner may ſeiſe them again whereſoever he findeth them, except they were ſold in fair or market, after they were ſtolen; and that *bona fide* without fraud.

If the thief be condemned for felony, or outlawed, or forfeit the ſtolen goods to the crown, the owner is without remedy.

BUT if the thief be condemned of the felony, or out-lawed for the ſame, or out-lawed in any perſonal action, or have committed a forfeiture of goods to the crown, then the true owner is without remedy.

NEVERTHELESS, if freſh after the goods were ſtolen, the true owner maketh purſuit after the thief and goods, and taketh the goods with the thief, he may take them again: and if he make no freſh purſuit, yet if he

proſecute

profecute the felon, ſo far as juſtice requireth, that is, to have him arraigned, indicted, and found guilty (though he be not hanged, nor have judgment of death) or have him out-lawed upon the indictment; in all theſe caſes he ſhall have his goods again, by a writ of reſtitution to the party in whoſe hands they are.

When the owner may take his goods from the thief. If he convict the thief of the ſame felony, he ſhall have his goods again by a writ of reſtitution.

4. *By waving of goods.*

BY waving of goods, a property is gotten thus. A thief having ſtolen goods, being purſued, flieth away and leaveth the goods. This leaving is called waving, and the property is in the King; except the lord of the manor have right to it, by cuſtom or charter.

But if the felon be indicted, adjudged, or found guilty, or outlawed, at the ſuit of the owner of theſe goods, he ſhall have reſtitution of theſe goods, as before.

5. *By ſtraying.*

BY ſtraying, property in live cattel is thus gotten. When they come into other mens grounds ſtraying from the owners, then the party or lord into whoſe grounds or manors they come, cauſeth them to be ſeiſed, and a wythe put about their necks, and to be cried in three markets adjoining, ſhewing the marks of the cattel; which done, if the true owner claimeth them not within a year and a day, then the property of them is in the lord of the manor whereunto they did ſtray, if he have all ſtrays by cuſtom or charter, elſe to the King.

6. *Wreck, and when it ſhall be ſaid to be.*

BY ſhipwreck, property of goods is thus gotten. When a ſhip loaden is caſt away upon the coaſts, ſo that no living creature that was in it when it began to ſink eſcaped to land with life, then all thoſe goods are ſaid to be wrecked, and they belong to the crown if they be found; except the lord of the ſoil adjoining can entitle himſelf unto them by cuſtom, or by the King's charter.

7. *Forfeitures.*

BY forfeitures, goods and chattels are thus gotten. If the owner be out-lawed, if he be indicted of felony, or treaſon, or either confeſs it, or be found guilty of it, or refuſe to be tried by peers or jury, or be attainted by judgment, or fly for felony (although he be not guilty,) or ſuffer the exigent to go forth againſt him (although he be not outlawed,) or that he go over the ſeas without licence, all the goods he had at the judgment, he forfeiteth to the crown; except ſome lord by charter can claim them. For in thoſe caſes preſcription will not ſerve, except it be ſo ancient, that it hath had allowance before the juſtices in eyre in their circuits, or in the King's-bench in ancient time.

8. *By executorſhip.*

BY executorſhip goods are gotten. When a man poſſeſſed of goods maketh his laſt will and teſtament in writing or by word, and maketh one

one or more executors thereof; theſe executors have by the will and death of the parties, all the property of their goods, chattels, leaſes for years, wardſhips and extents, and all right concerning thoſe things.

Executors may before probat diſpoſe of the goods, but not bring an action for any debt

THOSE executors may meddle with the goods, and diſpoſe them before they prove the will, but they cannot bring an action for any debt or duty before they have proved the will.

What probat of the will is, and in what manner it is made.

THE proving of the will is thus. They are to exhibit the will into the Biſhop's court, and there they are to bring the witneſſes, and there they are to be ſworn, and the Biſhop's officers are to keep the will original, and certify the copy thereof in parchment under the Biſhop's ſeal of office; which parchment ſo ſealed, is called the will proved.

9. *By letters of adminiſtration.*

BY letters of adminiſtration property in goods is thus gotten. When a man poſſeſſed of goods dieth without any will, there ſuch goods as the executors ſhould have had, if he had made a will, were by ancient law to come to the biſhop of the dioceſe, to diſpoſe for the good of his ſoul that died, he firſt paying his funerals and debts, and giving the reſt *ad pios uſus.*

Pii uſus.

† Where the inteſtate had *bona notabilia* in diverſe dioceſes, then the archbiſhop of that province where he died is to commit the adminiſtration.

THIS is now altered by ſtatute laws, ſo as the biſhops are to grant letters of adminiſtration of the goods at this day to the wife if ſhe requireth it, or children, or next of kin; if they refuſe it, as often they do, becauſe the debts are greater than the eſtate will bear, then ſome creditor or ſome other will take it as the biſhop's officers ſhall think meet. It groweth often in queſtion what biſhop ſhall have the right of proving wills, and granting adminiſtration of goods.

IN † which controverſy the rule is thus, that if the party dead had at the time of his death *bona notabilia* in diverſe dioceſes of ſome reaſonable value, then the archbiſhop of the province where he died is to have the probat of his will, or to grant the adminiſtration of his goods as the caſe falleth out; otherwiſe the biſhop of the dioceſe where he died is to do it.

Executor may refuſe before the biſhop, if he have not intermeddled with the goods.

IF there be but one executor made, yet he may refuſe the executorſhip, coming before the biſhop, ſo that he hath not intermeddled with any of the goods before, or with receiving debts, or paying legacies.

Executor ought to pay, 1. Judgments. 2. Stat. recogn. 3. Debts by bonds and bills ſealed. 4. Rent unpaid. 5. Servants wages. 6. Headworkmen. 7. Shop-book and contracts by word.

AND if there be more executors than one, ſo many as liſt may refuſe; and if any one take it upon him, the reſt that did once refuſe may, when they will, take it upon them; and no executor ſhall be farther charged with debts or legacies, than the value of the goods come to his hands; ſo that he foreſee that he pay debts upon record, firſt debts to the King, then upon judgments, ſtatutes, recognizances, then debts by bond and bill ſealed, rent unpayed, ſervants wages, payment to head workmen, and laſtly, ſhop-books, and contracts by word. For if an executor, or adminiſtrator pay debts to others before debts to the King, or debts due by bond before thoſe due by record, or debts by ſhop-books and contracts before thoſe by bond, arrearages of rent, and ſervants or workmens wages, he ſhall pay the ſame over again to thoſe others in the ſaid degrees.

Debts due in equal degree of record, the executor may pay which of them he pleaſe before ſuit commenced.

BUT yet the law giveth them choice, that where diverſe have debts due in equal degree of record or ſpecialty, he may pay which of them he will, before any ſuit brought againſt him; but if ſuit be brought he muſt firſt pay them that get judgment againſt him.

ANY one executor may convey the goods, or releaſe debts without his companion, and any one by himſelf may do as much as all together; but one man's releaſing of debts or ſelling of goods, ſhall not charge the other to pay ſo much of the goods, if there be not enough to pay debts; but it ſhall charge the party himſelf that did ſo releaſe or convey.

Any one executor may do as much as all together; but if a debt be releaſed and aſſets wanting, he only ſhall be charged.

BUT it is not ſo with adminiſtrators, for they have but one authority given them by the biſhop over the goods, which authority being given to many is to be executed by all of them joined together.

Otherwiſe of adminiſtrators.

AND if an executor die making an executor, the ſecond executor is executor to the firſt teſtator.

Executor dieth making his executor, the ſecond executor ſhall be executor to the firſt teſtator. But otherwiſe, if the adminiſtrator die making his executor, or if adminiſtration be committed of his goods. In both caſes the ordinary ſhall commit adminiſtration of the goods of the firſt inteſtate.

BUT if an adminiſtrator die inteſtate, then his adminiſtrator ſhall not be executor or adminiſtrator to the firſt; but in that caſe the biſhop, whom we call the ordinary, is to commit the adminiſtration of the firſt teſtator's goods to his wife, or next of kin, as if he had died inteſtate; always provided, that that which the executor did in his life-time, is to be allowed for good. And ſo if an adminiſtrator die and make his executor, the executor of the adminiſtrator ſhall not be executor to the firſt inteſtate; but the ordinary muſt new commit the adminiſtration of the goods of the firſt inteſtate again.

IF the executor or adminiſtrator pay debts, or funerals, or legacies of his own money, he may retain ſo much of the goods in kind, of the teſtator or inteſtate, and ſhall have property of it in kind.

Executors or adminiſtrators may retain.

10. *Property by legacy.*

PROPERTY by legacy, is where a man maketh a will and executors, and giveth legacies, he or they to whom the legacies are given muſt have the aſſent of the executors or one of them to have his legacy, and the property of that legacy or other goods bequeathed unto him, is ſaid to be in him; but he may not enter nor take his legacy without the aſſent of the executors, or one of them; becauſe the executors are charged to pay debts before legacies. And if one of them aſſent to pay legacies, he ſhall pay the value thereof of his own purſe, if there be not otherwiſe ſufficient to pay debts.

Executors or adminiſtrators may retain; becauſe the executors are charged to pay ſome debts before legacies.

BUT this is to be underſtood by debts of record to the King, or by bill and bond ſealed, or arrearages of rent, or ſervants or workmens wages; and not debts of ſhop-books, or bills unſealed, or contract by word; for before them legacies are to be paid.

Legacies are to be paid before debts by ſhop-books, bills unſealed, or contracts by word.

AND if the executors doubt that they ſhall not have enough to pay every legacy, they may pay which they liſt firſt; but they may not ſell any ſpecial legacy which they will to pay debts, or a leaſe of goods to pay a money legacy. But they may ſell any legacy which they will to pay debts, if they have not enough beſides.

Executor may pay which legacy he will firſt. If the executors do want, they may ſell any legacy to pay debts.

IF a man make a will and make no executors, or if the executors refuſe, the ordinary is to commit adminiſtration, *cum teſtamento annexo*, and take bonds of the adminiſtrators to perform the will, and he is to do it in ſuch ſort, as the executor ſhould have done, if he had been named.

When a will is made and no executor named, adminiſtration is to be committed *cum teſtamento annexo*.

Ex Autogr. W. Sancroft Archiep. Cantuar.

June 3. 1629. *Sam. Maunſell* utter-barriſter of the *Middle-Temple* having perus'd this book, atteſted it to be very uſeful to all young ſtudents of the law, and worthy to be imprinted: and then

Lambethae Junii 4° 1629. *Ut in aliena arte alieno nixus judicio libelli hujus imprimendi poteſtatem facio.*

JOHANNES JEFFERAY.

A PRE-

A

PREPARATION

Toward the

UNION of the LAWS of *England* and *Scotland.**

YOUR Majeſty's deſire of proceeding towards the union of this whole iſland of *Great Britain* under one law, is (as far as I am capable to make any opinion of ſo great a cauſe) very agreeable to policy and juſtice. To policy, becauſe it is one of the beſt aſſurances (as human events can be aſſured) that there will be never any relapſe in any future ages to a ſeparation. To juſtice, becauſe *dulcis tractus pari jugo:* it is reaſonable that communication of privilege draw on communication of diſcipline and rule. This work being of greatneſs and difficulty, needeth not to embrace any greater compaſs of deſignment, than is neceſſary to your Majeſty's main end and intention. I conſider therefore, that it is a true and received diviſion of law into *jus publicum* and *privatum*, the one being the ſinews of property, and the other of government; for that which concerneth private intereſt of *meum* and *tuum*, in my ſimple opinion, it is not at this time to be meddled with; men love to hold their own as they have held, and the difference of this law carrieth no mark of ſeparation; for we ſee in any one kingdom, which is moſt at unity in itſelf, there is diverſity of cuſtoms for the guiding of property and private rights, *in veſte varietas ſit, ſciſſura non ſit.* All the labour is to be ſpent in the other part, though perhaps not in all the other part; for it may be, your Majeſty in your high wiſdom will diſcern that even in that part, there will not be requiſite a conformity in all points. And although ſuch conformity were to be wiſhed, yet perchance it will be ſcarcely poſſible in many points to paſs them for the preſent by aſſent of parliament. But becauſe we that ſerve your Majeſty in the ſervice of our ſkill and profeſſion, cannot judge what your Majeſty, upon reaſon of ſtate, will leave and take; therefore it is fit for us to give as near as we can a general information: wherein I for my part, think good to hold my ſelf to one of the parallels, I mean that of the *Engliſh* laws. For although I have read, and read with delight, the *Scotiſh* ſtatutes, and ſome other collection of their laws; with delight I ſay, partly to ſee their brevity, and propriety of ſpeech, and partly to ſee them come ſo near to our laws: yet I am unwilling to put my ſickle in another's harveſt, but to leave it to the lawyers of the *Scotiſh* nation; the rather, becauſe I imagine with my ſelf, that if a *Scotiſh* lawyer ſhould undertake by reading of the *Engliſh* ſtatutes, or other our books of law, to ſet down poſitively in articles, what the law of *England* were, he might oftentimes err, and the like errors I make ac-

* This was printed in the laſt folio edition under the title of *Caſes of Treaſon*, &c the preface and ſeveral corrections are here added from *Stephens*'s edition in 1736.

count

count I might incur in theirs. And therefore, as I take it, the right way is, that the lawyers of either nation, do ſet down in brief articles what the law is of their nation, and then after, a book of two columns, either having the two laws placed reſpectively, to be offered to your Majeſty, that your Majeſty may by a ready view ſee the diverſities, and ſo judge of the reduction, or leaving it as it is.

Jus publicum I will divide, as I hold it fitteſt for the preſent purpoſe, into four parts. The firſt, concerning criminal cauſes, which with us are truly accounted *publici juris*, becauſe both the prejudice and the proſecution, principally pertain to the crown and publick eſtate. The ſecond, concerning the cauſes of the church. The third, concerning magiſtrates, offices, and courts, wherein falleth the conſideration of your Majeſty's regal prerogative, whereof the reſt are but ſtreams. And the fourth, concerning certain ſpecial politick laws, uſages and conſtitutions, that do import the publick peace, ſtrength and wealth of the kingdom. In which part I do comprehend not only conſtant ordinances of law, but likewiſe forms of adminiſtration of law, ſuch as are the commiſſions of the peace, the viſitations of the provinces by the judges of the circuits, and the like. For theſe in my opinion, for the purpoſe now in hand, deſerve a ſpecial obſervation, becauſe they being matters of that temporary nature, as they may be altered, as I ſuppoſe, in either kingdom without parliament, as to your Majeſty's wiſdom may ſeem beſt, it may be the moſt profitable and ready part of this labour will conſiſt in the introducing of ſome uniformity in them.

To begin therefore with capital crimes, and firſt that of TREASON.

CASES of TREASON.

WHERE a man doth compaſs or imagine the death of the King, if it appear by any overt act, it is treaſon.

WHERE a man doth compaſs or imagine the death of the King's wife, if it appear by any overt act, it is treaſon.

WHERE a man doth compaſs or imagine the death of the King's eldeſt ſon and heir, if it appear by any overt act, it is treaſon.

WHERE a man doth violate the King's wife, it is treaſon.

WHERE a man doth violate the King's eldeſt daughter unmarried, it is treaſon.

WHERE a man doth violate the wife of the King's eldeſt ſon and heir, it is treaſon.

WHERE a man doth levy war againſt the King in his realm, it is treaſon.

WHERE a man is adherent to the King's enemies, giving them aid and comfort, it is treaſon.

WHERE a man counterfeiteth the King's great ſeal, it is treaſon.

WHERE a man counterfeiteth the King's privy ſeal, it is treaſon.

WHERE a man counterfeiteth the King's privy ſignet, it is treaſon.

WHERE a man doth counterfeit the King's ſign manual, it is treaſon.

WHERE a man counterfeits the King's money, it is treaſon.

WHERE a man bringeth into the realm falſe money, counterfeited to the likeneſs of the coin of *England*, with intent to merchandiſe or make payment therewith, and knowing it to be falſe, it is treaſon.

WHERE a man counterfeiteth any foreign coin current in payment within this realm, it is treaſon.

WHERE a man doth bring in foreign money, being current within the realm, the ſame being falſe and counterfeit, with intent to utter it, and knowing the ſame to be falſe, it is treaſon.

WHERE a man doth clip, waſh, round, or file any of the King's money, or any foreign coin current by proclamation, for gain's ſake, it is treaſon.

WHERE a man doth any ways impair, diminiſh, falſify, ſcale, or lighten the King's money, or any foreign moneys, current by proclamation, it is treaſon.

WHERE a man killeth the Chancellor, being in his place, and doing his office, it is treaſon.

WHERE a man killeth the Treaſurer, being in his place, and doing his office, it is treaſon.

WHERE a man killeth the King's Juſtice in eyre, being in his place, and doing his office, it is treaſon.

WHERE a man killeth the King's Juſtice of aſſiſe, being in his place, and doing his office, it is treaſon.

WHERE a man killeth the King's Juſtice of *Oyer* and *Terminer*, being in his place, and doing his office, it is treaſon.

WHERE a man doth perſuade or withdraw any of the King's ſubjects from his obedience, or from the religion by his Majeſty eſtabliſhed, with intent to withdraw him from the King's obedience, it is treaſon.

WHERE a man is abſolved, reconciled, or withdrawn from his obedience to the King, or promiſeth his obedience to any foreign power, it is treaſon.

WHERE any jeſuit, or other prieſt ordained ſince the firſt year of the reign of Queen *Elizabeth*, ſhall come into, or remain in any part of this realm, it is treaſon.

WHERE any perſon being brought up in a college of jeſuits, or ſeminary, ſhall not return within ſix months after proclamation made, and within two days after his return, ſubmit himſelf to take the oath of ſupremacy, if otherwiſe he do return, or be within the realm, it is treaſon.

WHERE a man doth affirm or maintain any authority of juriſdiction ſpiritual, or doth put in ure or execute any thing for the advancement or ſetting forth thereof, ſuch offence the third time committed, is treaſon.

WHERE a man refuſeth to take the oath of ſupremacy, being tendred by the biſhop of the dioceſe, if he be an eccleſiaſtical perſon; or by commiſſion out of the chancery, if he be a temporal perſon; ſuch offence, the ſecond time, is treaſon.

WHERE a man committed for treaſon, doth voluntarily break priſon, it is treaſon.

WHERE a jailor doth voluntarily permit a man committed for treaſon to eſcape, it is treaſon.

WHERE a man procureth or conſenteth to a treaſon, it is treaſon.

WHERE a man relieveth or comforteth a traitor, knowing it, it is treaſon.

The puniſhment, trial, and proceedings in caſes of treaſon.

IN treaſon, the corporal puniſhment is by drawing on a hurdle from the place of the priſon to the place of execution, and by hanging and being cut down alive, bowelling and quartering: and in women by burning.

IN treaſon, there enſueth a corruption of blood in the line aſcending and deſcending.

In treaſon, lands and goods are forfeited, and inheritances, as well entailed as fee ſimple, and the profits of eſtates for life.

In treaſon, the eſcheats go to the King, and not to the lord of the fee.

In treaſon, the lands forfeited ſhall be in the King's actual poſſeſſion without office.

In treaſon there be no acceſſaries, but all are principals.

In treaſon, no benefit of clergy, or ſanctuary, or peremptory challenge.

In treaſon, if the party ſtand mute, yet nevertheleſs judgment and attainder ſhall proceed all one as upon verdict.

In treaſon, bail is not permitted.

In treaſon, no counſel is to be allowed to the party.

In treaſon, no witneſs ſhall be received upon oath for the party's juſtification.

In treaſon, if the fact be committed beyond the ſeas, yet it may be tried in any county where the King will award his commiſſion.

In treaſon, if the party be *non ſanae memoriae*, yet if he had formerly confeſſed it before the King's council, and that it be certified that he was of good memory at the time of his examination and confeſſion, the court may proceed to judgment without calling or arraigning the party.

In treaſon, the death of the party before conviction diſchargeth all proceedings and forfeitures.

In treaſon, if the party be once acquit, he ſhall not be brought in queſtion again for the ſame fact.

In treaſon, no new caſe not expreſſed in the ſtatute of 25 *Ed.* 3. nor made treaſon by any ſpecial ſtatute ſince, ought to be judged treaſon, without conſulting with the parliament.

In treaſon, there can be no proſecution but at the King's ſuit, and the King's pardon diſchargeth.

In treaſon, the King cannot grant over to any ſubject power and authority to pardon it.

In treaſon, a trial of a peer of the kingdom is to be by ſpecial commiſſion before the Lord High Steward, and thoſe that paſs upon him to be none but peers: and the proceeding is with great ſolemnity, the Lord Steward ſitting under a cloth of eſtate with a white rod of juſtice in his hand, and the peers may confer together, but are not any ways ſhut up; and are demanded by the Lord Steward their voices one by one, and the plurality of voices carrieth it.

In treaſon, it hath been an ancient uſe and favour from the Kings of this realm to pardon the execution of hanging, drawing, and quartering; and to make warrant for their beheading.

The proceeding in caſe of treaſon with a common ſubject is in the King's-bench, or by commiſſion of *Oyer* and *Terminer*.

MISPRISION OF TREASON.

Caſes of miſpriſion of treaſon.

Where a man concealeth high treaſon only, without any comforting or abetting, it is miſpriſion of treaſon.

Where a man counterfeiteth any foreign coin of gold or ſilver not current in the realm, it is miſpriſion of treaſon.

The

The punishment, trial, and proceeding in cases of misprision of treason.

THE punishment of misprision of treason is by perpetual imprisonment, loss of the issues of their lands during life, and loss of goods and chattels.

THE proceeding and trial is, as in cases of treason.

IN misprision of treason bail is not admitted.

PETIT TREASON.

Cases of petit treason.

WHERE the servant killeth the master, it is petit treason.

WHERE the wife killeth her husband, it is petit treason.

WHERE a spiritual man killeth his prelate, to whom he is subordinate, and oweth faith and obedience, it is petit treason.

WHERE the son killeth the father or mother, it hath been questioned whether it be petit treason, and the late experience and opinion seemeth to weigh to the contrary, though against law and reason in my judgment.

The punishment, trial, and proceeding in cases of petit Treason.

IN petit treason, the corporal punishment is by drawing on an hurdle, and hanging, and in a woman burning.

IN petit treason, the forfeiture is the same with the case of felony.

IN petit treason, all accessaries are but in case of felony.

FELONY.

Cases of Felony.

WHERE a man committeth murder, that is, homicide of prepensed malice, it is felony.

WHERE a man committeth manslaughter, that is, homicide of sudden heat, and not of malice prepensed, it is felony.

WHERE a man committeth burglary, that is, breaking of an house with an intent to commit felony, it is felony.

WHERE a man rideth armed, with a felonious intent, it is felony.

WHERE a man doth maliciously and feloniously burn a house, it is felony.

WHERE a man doth maliciously and feloniously burn corn upon the ground, or in stacks, it is felony.

WHERE a man doth maliciously cut out another's tongue, or put out his eyes, it is felony.

WHERE a man robbeth or stealeth, that is, taketh away another man's goods, above the value of twelve pence, out of his possession, with an intent to conceal it, it is felony.

WHERE a man imbezleth or withdraweth any the King's records at *Westminster*, whereby any judgment is reversed, it is felony.

WHERE a man that hath custody of the King's armour, munition, or other habiliments of war, doth maliciously convey away the same, to the value of twenty shillings, it is felony.

WHERE a ſervant hath goods of his maſter's delivered unto him, and goeth away with them, it is felony.

WHERE a man conjures, or invocates wicked ſpirits, it is felony.

WHERE a man doth uſe or practiſe any manner of witchcraft, whereby any perſon ſhall be killed, waſted, or lamed in his body, it is felony.

WHERE a man practiſeth any witchcraft, to diſcover treaſure hid, or to diſcover ſtoln goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods, the ſecond time, having been once before convicted of like offence, it is felony.

WHERE a man uſeth the craft of multiplication of gold or ſilver, it is felony.

WHERE a man committeth rape, it is felony.

WHERE a man taketh away a woman againſt her will, not claiming her as his ward or bondwoman, it is felony.

WHERE any perſon marrieth again, her or his former huſband or wife being alive, it is felony.

WHERE a man committeth buggery with man or beaſt, it is felony.

WHERE any perſons, above the number of twelve, ſhall aſſemble themſelves with intent to put down incloſures, or bring down prices of victuals, *&c.* and do not depart after proclamation, it is felony.

WHERE a man ſhall uſe any words to encourage or draw any people together, *ut ſupra*, and they do aſſemble accordingly, and do not depart after proclamation, it is felony.

WHERE a man being the King's ſworn ſervant, conſpireth to murder any lord of the realm, or any of the privy council, it is felony.

WHERE a ſoldier hath taken any parcel of the King's wages, and departeth without licence, it is felony.

WHERE a man receiveth a ſeminary prieſt, knowing him to be ſuch a prieſt, it is felony.

WHERE a recuſant, which is a ſeducer, and perſuader, and inciter of the King's ſubjects againſt the King's authority in eccleſiaſtical cauſes, or a perſuader of conventicles, *&c.* ſhall refuſe to abjure the realm, it is felony.

WHERE vagabonds be found in the realm, calling themſelves *Egyptians*, it is felony.

WHERE a purveyor taketh without warrant, or otherwiſe doth offend againſt certain ſpecial laws, it is felony.

WHERE a man hunteth in any foreſt, park, or warren, by night or by day, with vizards or other diſguiſements, and is examined thereof and concealeth his fact, it is felony.

WHERE a man ſtealeth certain kinds of hawks, it is felony.

WHERE a man committeth forgery the ſecond time, having been once before convicted, it is felony.

WHERE a man tranſporteth rams or other ſheep out of the King's dominions, the ſecond time, it is felony.

WHERE a man being impriſoned for felony, breaks priſon, it is felony.

WHERE a man procureth or conſenteth to a felony to be committed, it is felony, as to make him acceſſary before the fact.

WHERE a man receiveth or relieveth a felon, knowing thereof, it is felony, as to make him acceſſary after the fact.

WHERE a woman, by the conſtraint of her huſband, in his preſence, joineth with him in committing of felony, it is not felony, neither as principal, nor as acceſſary.

The puniſhment, trial, and proceeding in caſes of felony.

In felony, the corporal puniſhment is by hanging, and it is doubtful whether the King may turn it into beheading in the caſe of a Peer, or other perſon of dignity, becauſe in treaſon the ſtriking off the head is part of the judgment, and ſo the King pardoneth the reſt: but in felony, it is no part of the judgment, and the King cannot alter the execution of law; yet precedents have been both ways.

In felony, there followeth corruption of blood, except it be in caſes made felony by ſpecial ſtatutes, with a proviſo that there ſhall be no corruption of blood.

In felony, lands in fee ſimple, and goods are forfeited, but not lands intailed, and the profits of eſtates for life are likewiſe forfeited: And by ſome cuſtoms lands in fee ſimple are not forfeited;

The father to the bough, ſon to the plough;

as in *Gavelkind* in *Kent*, and other places.

In felony, the eſcheats go to the Lord of the fee, and not to the King, except he be Lord: But the profits of eſtates for lives, or in tail during the life of tenant in tail, go to the King; and the King hath likewiſe in fee ſimple lands holden of common Lords, *annum, diem, & vaſtum*.

In felony, the lands are not in the King before office, nor in the Lord before entry or recovery in writ of eſcheat, or death of the party attainted.

In felony, there can be no proceeding with the acceſſary before there be a proceeding with the principal; which principal if he die, or plead his pardon, or have his clergy before attainder, the acceſſaries can never be dealt with.

In felony, if the party ſtand mute, and will not put himſelf upon his trial, or challenge peremptorily above the number that the law allows, he ſhall have judgment not of hanging, but of penance of preſſing to death; but then he ſaves his lands and forfeits only his goods.

In felony, at the common law, the benefit of clergy or ſanctuary was allowed; but now by ſtatutes it is taken away in moſt caſes.

In felony, bail may be admitted where the fact is not notorious, and the perſon not of evil fame.

In felony, no counſel is to be allowed to the party, no more than in treaſon.

In felony, no witneſs ſhall be received upon oath for the party's juſtification, no more than in treaſon.

In felony, if the fact be committed beyond the ſeas, or upon the ſeas, *ſuper altum mare*, there is no trial at all in the one caſe, nor by courſe of jury in the other caſe, but by the juriſdiction of the Admiralty.

In felony, if the party be *non ſanae memoriae*, although it be after the fact, he cannot be tried nor adjudged, except it be in courſe of outlawry, and that is alſo erroneous.

In felony, the death of the party before conviction diſchargeth all proceedings and forfeitures.

In felony, if the party be once acquit, or in peril of judgment of life lawfully, he ſhall never be brought in queſtion again for the ſame fact.

In felony, the profecution may be either at the King's ſuit, by way of indictment; or at the party's ſuit, by way of appeal; and if it be by way of appeal, the defendant ſhall have his counſel and produce witneſſes upon oath, as in civil cauſes.

In felony, the King may grant *hault juſtice* to a ſubject, with the regality of power to pardon it.

In felony, the trial of Peers is all one as in caſe of treaſon.

In felony, the proceedings are in the King's Bench, or before Commiſſioners of *Oyer* and *Terminer*, or of goal delivery, and in ſome caſes before juſtices of peace.

Caſes of felonia de ſe, *with the puniſhment, trial and proceeding therein.*

In the civil law, and other laws, they make a difference of caſes of *felonia de ſe*; for where a man is called in queſtion upon any capital crime, and killeth himſelf to prevent the law, they give the ſame judgment in all points of forfeiture, as if they had been attainted in their life-time: And on the other ſide, where a man killeth himſelf upon impatience of ſickneſs, or the like, they do not puniſh it at all: But the law of *England* taketh it all in one degree, and puniſheth it only with loſs of goods to be forfeited to the King, who generally granteth them to his Almoner, where they be not formerly granted unto ſpecial liberties.

Offences of PRAEMUNIRE.

Caſes of Praemunire.

WHERE a man purchaſeth or accepteth any proviſion, that is, collation of any ſpiritual benefice or living, from the ſee of *Rome*, it is caſe of praemunire.

Where a man ſhall purchaſe any proceſs to draw any people of the King's allegiance out of the realm, in plea, whereof the cognizance pertains to the King's court, and cometh not in perſon to anſwer his contempt in that behalf before the King and his council, or in his chancery, it is caſe of praemunire.

Where a man doth ſue in any court which is not the King's court, to defeat or impeach any judgment given in the King's court, and doth not appear to anſwer his contempt, it is caſe of praemunire.

Where a man doth purchaſe or purſue in the court of *Rome*, or elſewhere, any proceſs, ſentence of excommunication, bull, inſtrument, or other thing which touches the King in his regality, or his realm in prejudice, it is caſe of praemunire.

Where a man doth affirm or maintain any foreign authority of juriſdiction ſpiritual, or doth put in ure or execute any thing for the advancement or ſetting forth thereof; ſuch offence, the ſecond time committed, is caſe of praemunire.

Where a man refuſeth to take the oath of ſupremacy being tendered by the biſhop of the dioceſs, if he be an eccleſiaſtical perſon; or by commiſſion out of the chancery, if he be a temporal perſon, it is caſe of praemunire.

Where the dean and chapter of any church upon the *Conge d'eſlire* of an archbiſhop or biſhop doth refuſe to elect any ſuch archbiſhop or biſhop as is nominated unto them in the King's letters miſſive, it is caſe of praemunire.

Where

WHERE a man doth contribute or give relief unto any jeſuit or ſeminary prieſts, or to any college of jeſuits or ſeminary prieſts, or to any perſon brought up therein, and called home, and not returning, it is caſe of praemunire.

WHERE a man is broker of an uſurious contract above ten in the hundred, it is caſe of praemunire.

The puniſhment, trial, and proceedings in caſes of praemunire.

THE puniſhment is by impriſonment during life, forfeiture of goods, forfeiture of lands in fee ſimple, and forfeiture of the profits of lands intailed, or for life.

THE trial and proceeding is as in caſes of miſpriſion of treaſon, and the trial is by peers, where a peer of the realm is the offender.

OFFENCES of ABJURATION and EXILE.

Caſes of abjuration and exile, and the proceedings therein.

WHERE a man committeth any felony, for the which at this day he may have privilege of ſanctuary, and taketh ſanctuary, and confeſſeth the felony before the coroner, he ſhall abjure the liberty of the realm, and chuſe his ſanctuary; and if he commit any new offence, or leave his ſanctuary, he ſhall loſe the privilege thereof, and ſuffer as if he had not taken ſanctuary.

WHERE a man not coming to the church, and being a popiſh recuſant, doth perſuade any the King's ſubjects to impugn his Majeſty's authority in cauſes eccleſiaſtical, or ſhall perſuade any ſubject from coming to church, or receiving the communion, or perſuade any ſubject to come to any unlawful conventicles, or ſhall be preſent at any ſuch unlawful conventicles, and ſhall not after conform himſelf within a time, and make his ſubmiſſion, he ſhall abjure the realm, and forfeit his goods and lands during life; and if he depart not within the time prefixed, or return, he ſhall be in the degree of a felon.

WHERE a man being a popiſh recuſant, and not having lands to the value of twenty marks *per annum*, nor goods to the value of 40 *l.* ſhall not repair to his dwelling, or place where he was born, and there confine himſelf within the compaſs of five miles, he ſhall abjure the realm; and if he return, he ſhall be in the degree of a felon.

WHERE a man kills the King's deer in chaſes or foreſts, and can find no ſureties after a year's impriſonment, he ſhall abjure the realm.

WHERE a man is a treſpaſſer in parks, or in ponds of fiſh, and after three years impriſonment cannot find ſureties, he ſhall abjure the realm.

WHERE a man is a raviſher of any child within age, whoſe marriage belongs to any perſon, and marrieth the ſaid child after years of conſent, and is not able to ſatisfy for the marriage, he ſhall abjure the realm.

OFFENCE of HERESY.

Caſes of Hereſy, and the trial and proceeding therein.

THE declaration of Hereſy, and likewiſe the proceeding and judgment upon hereticks, is by the common laws of this realm referred to the juriſdiction eccleſiaſtical, and the ſecular arm is reached unto them by the com-

mon laws, and not by any ſtatute, for the execution of them by the King's writ *de Haeretico comburendo.*

Of the KING's Prerogative.*

The King's prerogative in parliament.

THE King hath an abſolute negative voice to all bills that paſs the parliament, ſo as without his royal aſſent they have a mere nullity, and not ſo much as *auctoritas praeſcripta* or *ſenatus conſulta* had, notwithſtanding the interceſſion of tribunes.

THE King may ſummon parliaments, diſſolve them, prorogue them, and adjourn them at his pleaſure.

THE King may add voices in the parliament at his pleaſure, for he may give privilege to borough towns as many as he will, and may likewiſe call and create barons at his pleaſure.

NO man can ſit in parliament except he take the oath of allegiance.

The King's prerogative in matters of war and peace.

THE King hath power to declare and proclaim war, and to make and conclude peace and truce at his pleaſure.

THE King hath power to make leagues and confederacies with foreign ſtates, more ſtrait and leſs ſtrait, and to revoke and diſannul them at his pleaſure.

THE King hath power to command the bodies of his ſubjects for the ſervice of his wars, and to muſter, train and levy men, and to tranſport them by ſea or land at his pleaſure.

THE King hath power in time of war to execute martial law, and to appoint all officers of war at his pleaſure.

THE King hath power to grant his letters of mart and repriſal for remedy to his ſubjects upon foreign wrongs at his pleaſure.

THE King hath power to declare laws by his letters patents for the government of any place conquered by his arms at his pleaſure.

THE King may give knighthood, and thereby enable any ſubject to perform knight's-ſervice at his pleaſure.

The King's prerogative in matters of monies.

THE King may alter his ſtandard in baſeneſs or fineneſs of his coin at his pleaſure.

THE King may alter his ſtamp in the form at his pleaſure.

THE King may alter the valuations of his coin, and raiſe and fall monies at his pleaſure.

THE King by his proclamation may make monies of his own current, or not current, at his pleaſure.

THE King may take or refuſe the ſubjects bullion, and coin more or leſs money.

THE King by his proclamation may make foreign money current, or not current.

* This in the former Folio Edition was printed as part of the *Caſes of Treaſon*, &c.

The King's prerogative in matters of trade and traffick.

THE King may conſtrain the perſon of any of his ſubjects not to go out of the realm at all.

THE King may reſtrain any of his ſubjects to go out of the realm into any ſpecial part foreign.

THE King may forbid the exportation of any commodities out of the realm.

THE King may forbid the importation of any commodities into the realm.

THE King may ſet a reaſonable impoſt upon any foreign wares that come into the realm, and ſo of native wares that go out of the realm.

The King's prerogative in the perſons of his ſubjects.

THE King may create any corporation or body politick, and enable them to purchaſe, and grant, and to ſue, and be ſued; and that with ſuch reſtrictions and modifications as he pleaſes.

THE King may denizen and enable any foreigner for him and his deſcendants after the charter, though he cannot naturalize nor enable him to make pedigree from anceſtors paramount.

THE King may enable any attainted perſon (by his charter of pardon) to purchaſe, and to purge his blood for the time to come, though he cannot reſtore his blood for the time paſt.

THE King may enable any dead perſons in the law, as men profeſſed in religion, to take and purchaſe to the King's benefit.

*A twofold power of the law.**

1. A DIRECTION: In this reſpect the King is underneath the law, becauſe his acts are guided thereby.

2. CORRECTION: In this reſpect the King is above the law; for it may not correct him for any offence.

A twofold power in the King.

1. HIS abſolute power, whereby he may levy forces againſt any nation.

2. HIS limited power, which is declared and expreſſed in the laws what he may do.

The Office of Conſtables, Original and Uſe of Courts-Leet, Sheriff's Turn, &c. *with the Anſwer to the Queſtions propounded by Sir* Alexander Hay, *Knt. touching the Office of Conſtables.* Anno Domini 1608.

1. Queſt. *WHAT is the original of conſtables?*

Anſw. Of the original of the authority of conſtables, it may be ſaid, *caput inter nubila condit*; for the authority was granted upon the ancient laws and cuſtoms of this kingdom practiſed

* This is not in former Editions, but is here added from a MS. of the Earl of *Oxford*.

tiſed long before the conqueſt, and intended and inſtituted for the conſervation of the peace, and repreſſing of all manner of diſturbance and hurt of the people, and that as well by way of prevention as puniſhment; but yet ſo, as they have no judicial power, to hear and determine any cauſe, but only a miniſterial power, as in anſwer to the ſeventh article is demonſtrated.

As for the office of the high or head conſtable, the original of that is yet more obſcure; for though the high conſtable's authority hath the more ample circuit, he being over the hundred, and the petty-conſtable over the village; yet I do not find that the petty-conſtable is ſubordinate to the high-conſtable, or to be ordered or commanded by him; and therefore, I doubt, the high-conſtable was not *ab origine*; but that when the buſineſs of the county encreaſed, the authority of the juſtices of peace was enlarged by divers ſtatutes, and then, for conveniency ſake, the office of high-conſtables grew into uſe for the receiving of the commands and precepts from the juſtices of peace, and diſtributing them to the petty-conſtables; and in token of this, the election of high-conſtables in moſt parts of the kingdom is by the appointment of the juſtices of peace, whereas the election of the petty-conſtable is by the people.

But there be two things unto which the office of conſtable hath ſpecial reference and relation, and which of neceſſity, or at leaſt a kind of congruity, muſt precede the juriſdiction of that office; I mean either the things themſelves, or ſomewhat that hath a ſimilitude or analogy towards them.

1. The one is the diviſion of the territory, or groſs of the ſhires into hundreds, villages, and towns; for the high-conſtable is officer over the hundred, and the petty-conſtable is over the town or village.

2. The other is the court-leet, unto which the conſtable is attendant and miniſter; for there the conſtables are choſen by the jury, there ſworn, and there that part of their office which concerneth information is principally to be performed: for the jury being to preſent offences and offenders, are chiefly to take light from the conſtables of all matters of diſturbance and nuſance of the people, which they (in reſpect of their office) are preſumed to have beſt and moſt particular knowledge of.

The juriſdiction of the court-leet is to three ends.

1. The firſt to take the ancient oath of allegiance of all males above the age of twelve years.

2. The ſecond, to enquire of all offences againſt the peace; and for thoſe that are againſt the crown and peace both, to enquire of only, and certify to the juſtices of goal-delivery; but thoſe that are againſt the peace ſimply, they are to enquire of and puniſh.

3. The third is, to enquire of, puniſh, and remove all publick nuſances and grievances concerning infection of air, corruption of victuals, eaſe of chaffer, and contract of all other things that may hurt or grieve the people in general, in their health, quiet, and welfare.

And to theſe three ends, as matters of policy ſubordinate, the court-leet hath power to call upon the pledges that are to be taken for the good behaviour of the reſiants that are not tenants, and to enquire of all defaults of officers, as conſtables, ale-taſters, and the like: and likewiſe for the choice of conſtables, as aforeſaid.

The juriſdiction of theſe leets is either remaining in the King, and in that caſe exerciſed by the ſheriff in his turn, which is the grand leet, or granted over to ſubjects; but yet it is ſtill the King's court.

2. Queſt.

2. Queſt. *Concerning the election of conſtables?*

Anſw. The election of the petty-conſtable is, as was ſaid, at the court-leet by the inqueſt that makes the preſentments; and the election of the head-conſtables is by the juſtices of the peace at their quarter ſeſſions.

3. Queſt. *How long is their office?*

Anſw. The office is annual, except they be removed.

4. Queſt. *Of what rank or order of men are they?*

Anſw. They be men (as it is now uſed) of inferior, yea, of baſe condition, which is a mere abuſe of degenerating from the firſt inſtitution; for the petty-conſtables in towns ought to be of the better ſort of reſiants in the ſame; ſave that they be not aged or ſickly, but of able bodies in reſpect of the keeping watch and toil of their place; nor muſt they be in any man's livery. And the high-conſtables ought to be of the ableſt freeholders, and of the ſubſtantialleſt ſort of yeomen, next to the degree of gentlemen; but ſhould not be incumbred with any other office, as mayor of a town, under-ſheriff, bailiff, *&c.*

5. Queſt. *What allowance have the conſtables?*

Anſw. They have no allowance, but are bound by duty to perform their office *gratis*, which may the rather be endured, becauſe it is but annual; and they are not tied to keep or maintain any ſervants or under-miniſters, for that every one of the King's people within their limits are bound to aſſiſt them.

6. Queſt. *What if they refuſe to do their office?*

Anſw. Upon complaint made of their refuſal to any one juſtice of peace, the ſaid juſtice may bind them over to the ſeſſions, where, if they cannot excuſe themſelves by ſome juſt allegation, they may be fined and impriſoned for their contempt.

7. Queſt. *What is their authority or power?*

Anſw. The authority of conſtables, as it is ſubſtantive, and of it ſelf, or ſubſtituted, and aſtricted to the warrants and commands of the juſtices of peace; ſo again it is original, or additional: for either it was given them by the common law, or elſe annexed by divers ſtatutes. And as for ſubordinate power, wherein the conſtable is only to execute the commandments of the juſtices of peace, and likewiſe the additional power which is given by divers ſtatutes, it is hard to comprehend them in any brevity; for that they do correſpond to the office and authority of the juſtices of peace, which is very large, and are created by the branches of ſeveral ſtatutes, which are things of diverſe and diſperſed natures: but for the original and ſubſtantive power of a conſtable, it may be reduced to three heads:

1. For matter of peace only.

2. For matter of peace and the crown.

3. For matter of nuſance, diſturbance and diſorder, although they be not accompanied with violence and breach of the peace.

Firſt, For pacifying of quarrels begun, the conſtables may, upon hot words given, or likelihood of breach of the peace to enſue, command them in the King's name to keep the peace, and depart and forbear: and ſo he may where an affray is made, part the ſame, and keep the parties aſunder, and arreſt and commit the breakers of the peace, if they will not obey, and call power to aſſiſt him for the ſame purpoſe.

For puniſhment of breach of peace paſt, the law is very tender and ſparing in giving authority to conſtables, becauſe he hath no power judicial, and the uſe of his office is rather for preventing or ſtaying of miſchief, than for puniſhing of offences; for in that part he is rather to execute the warrants

of

of the juſtices; or when any ſudden matter ariſeth upon his view, or notorious circumſtances, to apprehend offenders, and carry them before the juſtice of peace, and generally to impriſon in like caſes of neceſſity, where the caſe will not endure the preſent carrying of the party before the juſtices. And thus much for the matters of peace.

Secondly, For matters of the crown, the office of the conſtable conſiſteth chiefly in theſe four parts:

The firſt is arreſt.

The ſecond is ſearch.

The third is hue and cry.

And the fourth is ſeizure of goods.

All which the conſtable may perform of his own authority, without any warrant of the juſtices of peace.

1. For firſt, If any man will lay murder or felony to another's charge, or do ſuſpect him of murder or felony, he may declare it to the conſtable, and the conſtable ought upon ſuch declaration or complaint, to carry him before a juſtice; and if by common voice or fame any man be ſuſpected, the conſtable of duty ought to arreſt him, and bring him before a juſtice, though there be no other accuſation or declaration.

2. If any houſe be ſuſpected for the receiving or harbouring of any felon, the conſtable, upon complaint or common fame, may ſearch.

3. If any fly upon the felony, the conſtable ought to raiſe hue and cry.

4. And ſeize his goods, and keep them ſafe without impairing, and inventory them in the preſence of honeſt neighbours.

Thirdly, For matters of common nuſance and grievance, they are of a very variable nature, according to the ſeveral comforts which man's life and ſociety requireth, and the contraries which infeſt the ſame.

In all which, be it matter of corrupting air, water, or victuals, or ſtopping, ſtraightening, or indangering paſſage, or general deceits in weights, meaſures, or ſizes, or counterfeiting wares, and things vendible; the office of the conſtable is to give (as much as in him lies) information of them, and of the offenders in leets, that they may be preſented; but becauſe leets are kept but twice in the year, and many of theſe things require preſent or ſpeedy remedy, the conſtable, in things notorious and of vulgar nature, ought to forbid and repreſs them in the mean time: if not, they are for their contempt to be fined and impriſoned, or both, by the juſtices in their ſeſſions.

8. Queſt. *What is their oath?*

Anſw. The oath they take is in this manner;

"You ſhall ſwear that you ſhall well and truly ſerve the King, and the "lord of this law-day; and you ſhall cauſe that the peace of our ſovereign "lord the King ſhall be well and duly kept to your power; and you ſhall "arreſt all thoſe that you ſee committing riots, debates, and affrays in breach "of peace: and you ſhall well and duly endeavour your ſelf to your beſt "knowledge, that the ſtatutes of *Wincheſter* for watch, hue and cry, and "the ſtatutes made for the puniſhment of ſturdy beggars, vagabonds, rogues, "and other idle perſons coming within your office be truly executed, and "the offenders puniſhed: and you ſhall endeavour, upon complaint made, to "apprehend barreters and riotous perſons making affrays, and likewiſe to "apprehend felons; and if any of them make reſiſtance with force, and "multitude of miſ-doers, you ſhall make out-cry, and purſue them till they "be taken; and ſhall look unto ſuch perſons as uſe unlawful games; and "you ſhall have regard unto the maintenance of artillery; and you ſhall "well

" well and duly execute all proceſs and precepts ſent unto you from the ju-
" ſtices of peace of the county; and you ſhall make good and faithful pre-
" ſentments of all bloodſheds, out-cries, affrays, and reſcues made within
" your office: and you ſhall well and duly, according to your power and
" knowledge, do that which belongeth to your office of conſtable to do, for
" this year to come. So help, *&c.*"

9. Queſt. *What difference is there betwixt the High conſtables and petty conſtables?*

Anſw. THE authority is the ſame in ſubſtance, differing only in extent; the petty-conſtable ſerving only for one town, pariſh, or borough; the head-conſtable ſerving for the whole hundred: neither is the petty-conſtable ſubordinate to the head-conſtable for any commandment that proceeds from his own authority; but it is uſed, that the precepts of the juſtices be delivered unto the high-conſtables, who being few in number, may better attend the juſtices, and then the head-conſtables, by virtue thereof, make their precepts over to the petty-conſtables.

10. Queſt. *Whether a conſtable may appoint a deputy?*

Anſw. IN caſe of neceſſity he may appoint a deputy, or in default thereof, the ſteward of the court-leet may; which deputy ought to be ſworn before the ſaid ſteward.

NOW to conclude, the office of conſtables conſiſts wholly in theſe three things, *viz.*

1. THE conſervation of the peace.
2. SERVING the precepts and warrants.
3. ATTENDANCE for the execution of ſtatutes.

Of the juriſdiction of juſtices itinerant *in the principality of* Wales.

King's-bench. THESE juſtices have power to hear and determine all criminal cauſes, which are called in the laws of *England*, the pleas of the crown; and herein they have the ſame juriſdiction that the juſtices have in the court of the King's bench.

Common-pleas. THEY have power to hear and determine all civil cauſes which are called in the laws of *England*, common-pleas, and do take knowledge of all fines levied of lands or hereditaments, without ſuing out any *dedimus poteſtatem*; and herein they have the ſame juriſdiction that the juſtices of the common-pleas do execute at *Weſtminſter*.

Juſtices of aſſize. THEY have power to hear and determine all aſſizes upon diſſeiſin of lands or hereditaments, wherein they equal the juriſdiction of the juſtices of aſſize.

THEY may hear and determine all notable violences and outrages perpetrated within their ſeveral precincts of the principality of *Wales*. And therein they have the ſame juriſdiction as the juſtices of *Oyer* and *Terminer*.

Theſe offices are in the King's gift.

THE prothonotary's office is to draw all the pleadings, and to enter and engroſs all records and judgments in all trivial cauſes.

THE clerk of the crown his office is to draw and engroſs all proceedings, arraignments, and judgments in criminal cauſes.

Theſe offices are in the judges diſpoſition.

THE marſhal's office is to attend the perſons of the judges at their coming, ſitting, and going from their ſeſſions or court.

THE crier is *tanquam publicus praeco*, to call forth ſuch perſons whoſe appearances are neceſſary, and to impoſe ſilence to the people.

The

The office of Juſtice of Peace.

THERE is a commiſſion under the great ſeal of *England* to certain gentlemen, giving them power to preſerve the peace, and to reſiſt and puniſh all turbulent perſons, whoſe miſdemeanors may tend to the diſquiet of the people; and theſe be called the juſtices of peace, and every of them may well and truly be called and termed *Eirenarcha.*

THE chief of them is called *cuſtos rotulorum*, in whoſe cuſtody all the records of their proceedings are reſiding.

OTHERS there are of that number called juſtices of peace and *quorum*, becauſe in their commiſſion they have power to ſit and determine cauſes concerning breach of peace, and miſbehaviour. The words of their commiſſion are conceived thus, *quorum* ſuch and ſuch, *unum vel duos &c. eſſe volumus*; and without ſome one or more of them of the *quorum*, no ſeſſions can be holden, and for the avoiding of a ſuperfluous number of ſuch juſtices (for through the ambition of many, it is counted a credit to be burthened with that authority) the ſtatute of 38 *H.* VIII. hath expreſly prohibited that there ſhall be but eight juſtices of peace in every county. Theſe juſtices do hold their ſeſſions quarterly.

Theſe juſtices appointed by the Lord Keeper.

IN every ſhire where the commiſſion of the peace is eſtabliſhed, there is alſo a clerk of the peace for the entering and engroſſing of all proceedings before the ſaid juſtices. And this officer is appointed by the *cuſtos rotulorum.*

The office of Sheriffs.

EVERY ſhire hath its ſheriff, which word being of the *Saxon Engliſh*, is as much to ſay as ſhire-reeve, or miniſter of the county: his function or office is two-fold:

1. Miniſterial.
2. Judicial.

AS touching his miniſterial office, he is the miniſter and executioner of all the proceſs and precepts of the courts of law, and therefore ought to make return and certificate. 34 H. 8. cap. 16.

AS touching his judicial office, he hath authority to hold two ſeveral courts of diſtinct natures: the one called the *Turn*, becauſe he keepeth his turn and circuit about the ſhire, and holdeth the ſame court in ſeveral places, wherein he doth enquire of all offences perpetrated againſt the common law, and not forbidden by any ſtatute or act of parliament; and the juriſdiction of this court is derived from juſtice diſtributive, and is for criminal offences, and is held twice every year.

THE other is called the *County court*, wherein he doth determine all petty and ſmall cauſes civil under the value of forty ſhillings, ariſing within the ſaid county, and therefore it is called the county court.

THE juriſdiction of this court is derived from juſtice commutative, and is held every month. The office of the ſheriff is annual, and in the King's gift, whereof he is to have a patent.

The office of Eſcheator.

EVERY ſhire hath an officer called an eſcheator, which is to attend the King's revenue, and to ſeize into his Majeſty's hands all lands eſcheated, and goods, or lands forfeited, and therefore is called eſcheator; and he is to enquire by good inqueſt of the death of the King's tenants, and to whom their lands are deſcended, and to ſeize their bodies and lands for ward, if 34 H. 8. 20.

they be within age, and is accountable for the ſame; and this officer is named by the Lord Treaſurer of *England*.

The office of Coroner.

THERE are in every ſhire two other officers called coroners, and by their office they are to inqueſt in what manner, and by whom every perſon dying of a violent death, came ſo to his death; and to enter the ſame of record; which is matter criminal, and a plea of the crown, and therefore they are coroners, or crowners, as one hath written, becauſe their enquiry ought to be publick *in corona populi*.

THESE officers are choſen by the freeholders of the ſhire, by virtue of a writ out of the chancery, *de coronatore eligendo*: and of them I need not to ſpeak more, becauſe theſe officers are in uſe every where.

General obſervations touching Conſtables, Goalers, and Bailiffs.

Conſtables of the hundred. FORASMUCH as every ſhire is divided into hundreds, it is alſo by the ſaid ſtatute of 34 *H.* VIII. *cap.* 26. ordered that two ſufficient gentlemen or yeomen ſhall be appointed conſtables of every hundred.

Goalers office. ALSO there is in every ſhire one goal or priſon appointed for the reſtraint of liberty of ſuch perſons as for their offences are thereunto committed, until they ſhall be delivered thence by courſe of law.

IN every hundred of every ſhire the ſheriff thereof ſhall nominate ſufficient perſons to be bailiffs of that hundred, and under-miniſters of the ſheriff; and they are to attend upon the juſtices in every of their courts and ſeſſions.

THE

THE ARGUMENTS in LAW OF Sir *FRANCIS BACON*, Knight, The KING's Solicitor-General, In certain great and difficult CASES.

To my loving friends and fellows,

The READERS, ANCIENTS, UTTER-BARRISTERS and STUDENTS of *Grays-Inn.*

I Do not hold the law of *England* in ſo mean an account, but that which other laws are held worthy of, ſhould be due likewiſe to our laws, as no leſs worthy for our ſtate. Therefore when I found that not only in the ancient times, but now at this day in *France*, *Italy*, and other nations, the ſpeeches, and as they term them pleadings, which have been made in judicial caſes (where the caſes were mighty and famous) have been ſet down by thoſe that made them, and publiſhed; ſo that not only a *Cicero*, a *Demoſthenes*, or an *AEſchines* hath ſet forth his Orations, as well in the judicial as deliberative, but a *Marrian* and a *Pavier* have done the like by their pleadings; I know no reaſon why the ſame ſhould not be brought in uſe by the profeſſors of our law for their arguments in principal caſes. And this I think the more neceſſary, becauſe the compendious form of reporting reſolutions with the ſubſtance of the reaſons, lately uſed by Sir *Edward Coke*, Lord Chief Juſtice of the King's-bench, doth not delineate or trace out to the young practiſers of law, a method and form of argument for them to imitate. It is true I could have wiſhed ſome abler perſon had begun; but it is a kind of order ſometimes to begin with the meaneſt. Nevertheleſs thus much I may ſay with modeſty, that theſe arguments which I have ſet forth (moſt of them) are upon ſubjects not vulgar; and therewithal, in regard of the commixture, which the courſe of my life hath made of law with other ſtudies, they may have the more variety, and perhaps the more depth of reaſon: for the reaſons of municipal laws, ſever'd from the grounds of nature, manners and policy, are like wall-flowers, which though they grow high upon the creſt of ſtates, yet they have no deep root: beſides, in all publick ſervices I ever valued my reputation more than my pains; and therefore in weighty cauſes I always uſed extraordinary diligence; in all which reſpects

I perſuade my ſelf the reading of them will be not unprofitable. This work I knew not to whom to dedicate, rather than to the ſociety of GRAYS-INN, the place whence my father was called to the higheſt place of juſtice, and where my ſelf have lived and had my proceedure, ſo far, as by his Majeſty's rare if not ſingular grace, to be of both his councils: and therefore few men, ſo bound to their ſocieties by obligation, both anceſtral and perſonal, as I am to yours; which I would gladly acknowledge not only in having your name joined with mine own in a book, but in any other good office and effect which the active part of my life and place may enable me unto toward the ſociety, or any of you in particular. And ſo I bid you right heartily farewel.

Your aſſured loving friend and fellow,

FRANCIS BACON.

THE

CASE

OF

IMPEACHMENT of WASTE,

Argued before all the JUDGES in the *EXCHEQUER-CHAMBER.*

THE caſe needs neither repeating nor opening. The point is in ſubſtance but one, familiar to be put, but difficult to be reſolved; that is, whether upon a leaſe without impeachment of waſte, the property of the timber-trees after ſeverance, be not in him that is owner of the inheritance.

THE caſe is of great weight, and the queſtion of great difficulty: weighty it muſt needs be, for that it doth concern or may concern all the lands in *England*; and difficult it muſt be, becauſe this queſtion ſails *in confluentiis aquarum*, in the meeting or ſtrife of two great tides. For there is a ſtrong current of practice and opinion on the one ſide, and there is a more ſtrong current (as I conceive) of authorities, both ancient and late on the other ſide. And therefore according to the reverend cuſtom of the realm, it is brought now to this aſſembly; and it is high time the queſtion receive an end, the law a rule, and mens conveyances a direction.

THIS doubt ariſeth and reſteth upon two things to be conſidered; firſt to conſider of the intereſt and property of a timber-tree, to whom it belongeth: and ſecondly, to conſider of the conſtruction and operation of theſe words or clauſe, *abſque impetitione vaſti:* for within theſe two branches will aptly fall whatſoever can be pertinently ſpoken in this queſtion, without obſcuring the queſtion by any other curious diviſion.

FOR

For the firſt of theſe conſiderations, which is the intereſt or property of a timber-tree, I will maintain and prove to your lordſhips three things.

FIRST, that a timber-tree while it groweth, is merely parcel of the inheritance, as well as the ſoil itſelf. And ſecondly, I will prove, that when either nature, or accident, or the hand of man hath made it tranſitory, and cut it off from the earth, it can't change the owner, but the property of it goes where the inheritance was before. And thus much by the rules of the common law.

AND thirdly, I will ſhew that the ſtatute of *Glouceſter* doth rather corroborate and confirm the property in the leſſor than alter it, or transfer it to the leſſee.

AND for the ſecond conſideration, which is the force of that clauſe, *abſque impetitione vaſti*, I will alſo uphold and make good three other aſſertions.

Firſt, THAT if that clauſe ſhould be taken in the ſenſe which the other ſide would force upon it, that it were a clauſe repugnant to the eſtate and void.

Secondly, THAT the ſenſe which we conceive and give, is natural in reſpect of the words, and for the matter agreeable to reaſon and the rules of law.

And laſtly, THAT if the interpretation ſeem ambiguous and doubtful, yet the very miſchief it ſelf, and conſideration of the common-wealth, ought rather to incline your lordſhips judgment to our conſtruction.

MY firſt aſſertion therefore is, that a timber-tree is a ſolid parcel of the inheritance, which may ſeem a point admitted, and not worth the labouring. But there is ſuch a chain in this caſe, as that which ſeemeth moſt plain, if it's ſharply looked into, doth invincibly draw on that which is moſt doubtful. For if the tree be parcel of the inheritance unſevered, inherent in the reverſion, ſeverance will not alien it, nor the clauſe will not diveſt it.

To open therefore the nature of an inheritance: ſenſe teacheth there be of the ſoil and earth, parts that are raiſed and eminent, as timber-trees, rocks, houſes. There be parts that are ſunk and depreſſed, as mines which are called by ſome *arbores ſubterraneae*, becauſe that as trees have great branches and ſmaller boughs and twigs; ſo have they in their region greater and ſmaller veins: ſo if we had in *England* beds of *porcelane*, ſuch as they have in *China*, which *porcelane* is a kind of a plaſter buried in the earth, and by length of time congealed and glazed into that fine ſubſtance; this were as an artificial *mine*, and no doubt part of the inheritance. Then are there the ordinary parts, which make the maſs of the earth, as ſtone, gravel, loam, clay and the like.

Now as I make all theſe much in one degree, ſo there is none of them, nor timber-trees, not quarries, not minerals or foſſils, but hath a double nature; inheritable and real, while it is contained with the maſs of the earth, and tranſitory and perſonal, when it is once ſevered. For even gold and precious ſtone, which is more durable out of earth than any tree is upon the earth; yet the law doth not hold of that dignity as to be matter of inheritance if it be once ſevered. And this is not becauſe it becometh moveable, for there be moveable inheritances, as villains in groſs, and dignities which are judged hereditaments; but becauſe by their ſeverance they loſe their nature of perpetuity, which is of the eſſence of an inheritance.

Nevil's caſe proving there are inheritances which are not local.

And herein I do not a little admire the wiſdom of the laws of *England*, and the conſent which they have with the wiſdom of philoſophy and nature it ſelf: for it is a maxim in philoſophy, that *in regione elementari nihil eſt aeternum, niſi per propagationem ſpeciei, aut per ſucceſſionem partium.*

The conſent of the law with philoſophy in diſtinguiſhing between perpetual and tranſitory.

AND it is moſt evident, that the elements themſelves, and their products have a perpetuity not *in individuo*, but by ſupply and ſucceſſion of parts; for example, the veſtal fire, that was nouriſhed by the virgins at *Rome*, was not the ſame fire ſtill, but was in perpetual waſte, and in perpetual renovation. So it is of the ſea and waters, it is not the ſame water individually, for that exhales by the ſun, and is fed again by ſhowers. And ſo of the earth it ſelf, and mines, quarries, and whatſoever it containeth, they are corruptible individually, and maintained only by ſucceſſion of parts, and that laſteth no longer than they continue fixed to the main and mother-globe of the earth, and is deſtroyed by their ſeparation.

ACCORDING to this I find the wiſdom of the law, by imitation of the courſe of nature, to judge of inheritances and things tranſitory; for it alloweth no portions of the earth, no ſtone, no gold, no mineral, no tree, no mold to be longer inheritance than they adhere to the maſs, and ſo are capable of ſupply in their parts: for by their continuance of body ſtands their continuance of time.

NEITHER is this matter of diſcourſe, except the deep and profound reaſons of law, which ought chiefly to be ſearched, ſhall be accounted diſcourſe, as the ſlighter ſort of wits (*Scioli*) may eſteem them.

AND therefore now that we have opened the nature of inheritable and tranſitory, let us ſee upon a diviſion of eſtates, and before ſeverance, what kind of intereſts the law allotteth to the owner of inheritance, and what to the particular tenant; for they be competitors in this caſe.

The conſent of the law with the civil law, in the diſtinguiſhing between inheritance and particular eſtates, which hath relation to their diviſion of *dominium* and *uſus-fructus*.

FIRST, In general the law doth aſſign to the leſſor thoſe parts of the ſoil conjoined, which have obtained the reputation to be durable, and of continuance, and ſuch as being deſtroyed, are not but by long time renewed; and to the *Terminors* it aſſigneth ſuch intereſts as are tender and feeble againſt the force of time, but have an annual or ſeaſonable return or revenue. And herein it conſents again with the wiſdom of the civil law; for our inheritance and particular eſtate is in effect their *dominium* and *uſus-fructus*; for ſo it was conceived upon the ancient ſtatute of depopulations 4 *Hen.* VII. which was penned, *that the Owner of the land ſhould re-edify the houſes of husbandry*, that the word *Owner* (which anſwereth to *dominus*) was he that had the immediate inheritance, and ſo ran the later ſtatutes. Let us ſee therefore what judgment the law maketh of a timber-tree; and whether the law doth not place it within the lot of him that hath the inheritance as parcel thereof.

Owner in the ſtatute of 4 H. 7.

The writ of waſte ſuppoſeth the felling timber to be *ad exhaeredationem*.

FIRST it appeareth by the regiſter out of the words of the writ of waſte, that the waſte is laid to be *ad exhaeredationem*, which preſuppoſeth *haereditatem*: for there can't be a diſinheriſon by the cutting down of the tree, except there was an inheritance in the tree, *quia privatio praeſupponit actum*.

The ſtatute of *Glouceſter*, *quod recuperet rem vaſtatam*, not *locum vaſtatum*.

AGAIN it appeareth out of the words of the ſtatute of *Glouceſter* well obſerved, that the tree and the ſoil are one entire thing, for the words are, *quod recuperet rem vaſtatam*; and yet the books ſpeak, and the very judgment in waſte is, *quod recuperet locum vaſtatum*, which ſhews, that *res* and *locus* are in expoſition of law taken indifferently: for the leſſor ſhall not recover only the ſtem of the tree, but he ſhall recover the very ſoil, whereunto the ſtem continues. And therefore it is notably ruled in 22 *H.* VI. f. 13. that if the *Terminor* do firſt cut down the tree, and then deſtroy the ſtem, the leſſor ſhall declare upon two ſeveral waſtes, and recover treble damages for them ſeverally. But ſays the book he muſt bring but one writ, for he can recover the place waſted but once.

22 H.6. f. 13.

AND

AND farther proof may be fitly alledged out of *Mullin*'s caſe in the commentaries, where it is ſaid, that for timber-trees tithes ſhall not be paid. And the reaſon of the book is well to be obſerved; *for that tithes are to be paid for the revenue of the inheritance, and not for the inheritance itſelf.* *Mullin*'s caſe.

NAY, my lords, it is notable to conſider what a reputation the law gives to the trees, even after they are ſevered by grant, as may be plainly inferred out of *Herlackenden*'s caſe, L. *Coke* p. 4. f. 62. I mean the principal caſe; where it is reſolved, that if the trees being excepted out of a leaſe granted to the leſſee, or if the grantee of trees accept a leaſe of the land, the property of the trees drown not, as a term ſhould drown in a freehold, but ſubſiſt as a chattel divided; which ſhews plainly, though they be made tranſitory, yet they ſtill to ſome purpoſe favour of the inheritance: for if you go a little farther, and put the caſe of a *ſtate tail*, which is a ſtate of inheritance, then I think clearly they are re-annexed. But on the other ſide, if a man buy corn ſtanding upon the ground, and take a leaſe of the ſame ground, where the corn ſtands, I ſay plainly it is re-affixed, for *paria copulantur cum paribus.* Co. p. 4. f. 62.

AND it is no leſs worthy the note, what an operation the inheritance leaveth behind it in matter of waſte, even when it is gone, as appeareth in the caſe of tenant after poſſibility, who ſhall not be puniſhed; for though the new reaſon be, becauſe his eſtate was not within the ſtatute of *Glouceſter*; yet I will not go from my old Maſter *Littleton*'s reaſon, which ſpeaketh out of the depth of the common law, he ſhall not be puniſhed *for the inheritance ſake which was once in him.*

BUT this will receive a great deal of illuſtration, by conſidering the *Terminor*'s eſtate, and the nature thereof, which was well defined by Mr. *Heath* (who ſpake excellent well to the caſe) that it is ſuch as he ought to yield up the inheritance in as good plight, as he received it; and therefore the word *firmarius* (which is the word of the ſtatute of *Marlebridge*) cometh, as I conceive, *a firmando*; becauſe he makes the profit of the inheritance, which otherwiſe ſhould be upon account, and uncertain, firm and certain; and accordingly *feodi firma* fee-farm is a perpetuity certain: Therefore the nature and limit of a particular tenant is to make the inheritance certain, and not to make it worſe. The derivation and force of the word *firmarius*.

1. THEREFORE he cannot break the ſoil otherwiſe than with his ploughſhare to turn up perhaps a ſtone, that lieth aloft; his intereſt is *in ſuperficie* not *in profundo*, he hath but *tunicam terrae*; little more than the veſture.

IF we had firr-timber here, as they have in *Muſcovy*, he could not pierce the tree to make the pitch come forth, no more than he may break the earth.

SO we ſee the evidence, which is *propugnaculum haereditatis*, the fortreſs and defence of the land belongeth not to the leſſee, but to the owner of the inheritance. The evidence *propugnaculum haereditatis*.

SO the leſſee's eſtate is not accounted of that dignity, that it can do homage, becauſe it is a badge of continuance in the blood of lord and tenant. Neither for my own opinion can a particular tenant of a manor have aid *pur file marier*, *ou pur faire fitz chevalier*; becauſe it is given by law upon an intendment of continuance of blood and privity between lord and tenant. Homage importeth continuance in the blood. Particular tenants of ſeigniories ſhall not have aid.

AND for the tree which is now in queſtion, do but conſider in what a revolution the law moves, and as it were in an orb: for when the tree is young and tender, *germen terrae*, a ſprout of the earth, the law giveth it to the leſſee, as having a nature not permanent, and yet eaſily reſtored: when it comes to be a timber-tree, and hath a nature ſolid and durable, the law carrieth

carrieth it to the leſſor. But after again if it become a ſear and a dotard, and its ſolid parts grow putrefied, and as the poet ſaith, *non jam mater alit tellus viresque miniſtrat*, then the law returns it back to the leſſee. This is true juſtice, this is *ſuum cuique tribuere*; the law guiding all things with line of meaſure and proportion.

The phraſe that the leſſee hath a ſpecial property in the tree very improper; for he hath but the profits of the tree.

And therefore that intereſt of the leſſee in the tree, which the books call a ſpecial property, is ſcarce worth that name. He ſhall have the ſhade, ſo ſhall he have the ſhade of a rock; but he ſhall not have a cryſtal or *Briſtol* diamond growing upon the rock. He ſhall have the pannage; why? that is the fruit of the inheritance of a tree, as herb or graſs is of the ſoil. He ſhall have ſeaſonable loppings; why? ſo he ſhall have ſeaſonable diggings of an open mine. So all theſe things are rather profits of the tree, than any ſpecial property in the tree. But about words we will not differ.

So as I conclude this part, that the reaſon and wiſdom of law doth match things, as they conſort, aſcribing to permanent ſtates permanent intereſt, and to tranſitory ſtates tranſitory intereſt; and you cannot alter this order of law by fancies of clauſes and liberties, as I will tell you in the proper place. And therefore the tree ſtanding belongs clearly to the owner of the inheritance.

Now come I to my ſecond aſſertion, that by the ſeverance the ownerſhip or property cannot be altered; but that he that had the trees as part of the inheritance before, muſt have it as a chattel tranſitory after. This is pregnant and followeth of itſelf, for it is the ſame tree ſtill, and as the ſcripture ſaith, *uti arbor cadit, ita jacet.*

The owner of the whole muſt needs own the parts; he that owneth the cloth owneth the thread, and he that owneth an engine, when it is entire, owneth the parts when it is broken; breaking cannot alter property.

Herlackenden's caſe.

And therefore the book in *Herlackenden*'s caſe doth not ſtick to give it ſomewhat plain terms; and to ſay that it were an abſurd thing, that the leſſee which hath a particular intereſt in the land, ſhould have an abſolute property in that which is part of the inheritance: you would have the ſhadow draw the body, and the twigs draw the trunk. Theſe are truly called abſurdities. And therefore in a concluſion ſo plain, it ſhall be ſufficient to vouch the authorities without enforcing the reaſons.

And although the diviſion be good, that was made by Mr. *Heath*, that there be four manners of ſeverances, that is when the leſſee fells the tree, or when the leſſor fells it, or when a ſtranger fells it, or when the act of God, a tempeſt fells it, yet this diviſion tendeth rather to explanation than to proof; and I need it not, becauſe I do maintain that in all theſe caſes the property is in the leſſor.

Three arguments of property, damages, ſeiſure and power to grant.

And therefore I will uſe a diſtribution which rather preſſeth the proof. The queſtion is of property. There be three arguments of property, damages, ſeiſure, and grant; and according to theſe I will examine the property of the trees by the authority of books.

And firſt for damages.

For damages look into the books of the law, and you ſhall not find the leſſee ſhall ever recover damages, not as they are a badge of property; for the damages, which he recovereth, are of two natures, either for the ſpecial property (as they call it) or as he is chargeable over. And for this to avoid length, I will ſelect three books, one where the leſſee ſhall recover treble damages, another where he ſhall recover but for his ſpecial property, and the third where he ſhall recover for the body of the tree, which is a ſpecial caſe, and ſtandeth merely upon a ſpecial reaſon.

The

THE firſt is the book of 44 *E.* III. f. 27. where it is agreed, that if tenant for life be, and a diſſeiſor commit waſte, the leſſee ſhall recover in treſpaſs as he ſhall anſwer in waſte: but that this is a kind of recovery of damages, tho' *per accidens*, may appear plainly. 44 E. 3. f. 27.

FOR if the leſſor die, whereby his action is gone, then the diſſeiſor is likewiſe diſcharged, otherwiſe than for the ſpecial property.

THE ſecond book is 9 *E.* IV. f. 35. where it is admitted, that if the leſſor himſelf cut down the tree, the leſſee ſhall recover but for his ſpecial profit of ſhade, pannage, loppings, becauſe he is not charged over. 9 E. 4. f. 35.

THE third is 44 *E.* III. f. 44. where it is ſaid, that if the leſſee fell trees to repair the barn, which is not ruinous in his own default, and the leſſor come and take them away, he ſhall have treſpaſs, and in that caſe he ſhall recover for the very body of the tree, for he hath an abſolute property in them for that intent. 44 E. 3. f. 44.

AND that it is only for that intent appeareth notably by the book 38 *Aſſ.* f. 1. If the leſſee after he hath cut down the tree employ it not to reparations, but employ other trees of better value, yet it is waſte; which ſheweth plainly the property is reſpective to the employment. 38 Aſſ. f. 1.

NAY, 5 *E.* IV. f. 100. goeth farther and ſheweth, that the ſpecial property which the leſſee had was of the living tree, and determines as *Herlackenden*'s caſe ſaith by ſeverance; for then *magis dignum trahit ad ſe minus dignum*: for it ſaith, that the leſſee can't pay the workmen's wages with thoſe parts of the tree which are not timber. And ſo I leave the firſt demonſtration of property, which is by damages; except you will add the caſe of 27 *H.* VIII. f. 13. where it is ſaid, that if tenant for life and he in the reverſion join in a leaſe for years, and leſſee for years fell timber-trees, they ſhall join in an action of waſte; but he in the reverſion ſhall recover the whole damages: and great reaſon, for the ſpecial property was in the leſſee for years, the general in him in the reverſion, ſo the tenant for life meane had neither the one nor the other. 5 E. 4. f. 100. 27 H. 8. f. 13.

Now for the ſeiſure you may not look for plentiful authority in that: for the leſſor, which had the more beneficial remedy by action for treble damages, had little reaſon to reſort to the weaker remedy by ſeiſure, and leaſes without impeachment were then rare, as I will tell you anon. And therefore the queſtion of the ſeiſure came chiefly in experience upon the caſe of the windfalls, which could not be puniſhed by action of waſte.

FIRST therefore the caſe of 40 *E.* III. pl. 22. is expreſs, where at the King's ſuit in the behalf of the heir of *Darcy* who was in ward, the King's leſſee was queſtioned in waſte, and juſtified the taking of the trees, becauſe they were overthrown by winds, and taken away by a ſtranger. But *Knevet* ſaith, although one be guardian, yet the trees, when by their fall they are ſevered from the freehold, he hath no property of the chattels, but they appertain to the heir, and the heir ſhall have treſpaſs of them againſt a ſtranger, and not the guardian, no more than the bailiff of a manor. So that that book rules the intereſt of the tree to be in the heir, and goes to a point farther, that he ſhall have treſpaſs for them; but of ſeiſure there had been no queſtion. 40 E. 3. pl. 22.

SO again in 2 *H.* VII. the words of *Brian* are, that for the timber-trees the leſſor may take them; for they are his, and ſeemeth to take ſome difference between them and the gravel. 2 H. 7. f. 14.

THE

34 E. 3. f. 5. THE like reaſon is of the timber of an houſe, as appears 34 *E.* 3. f. 5. abridged by *Brook*, *tit.* waſte, pl. 34. when it is ſaid, it was doubted who ſhould have the timber of a houſe which fell by tempeſt; and ſaith the book, it ſeems it doth appertain to the leſſor; and good reaſon, for it is no waſte, and the leſſee is not bound to re-edify it: and therefore it is reaſon the leſſor have it; but *Herlackenden*'s caſe goes farther, where it is ſaid that the leſſee may help himſelf with the timber, if he will re-edify it; but clearly he hath no intereſt but towards a ſpecial employment.

9 E 4. f. 35. Now you have had a caſe of the timber-tree, and of the timber of the houſe, now take a caſe of the *mine*, where that of the trees is likewiſe put, and that is 9 *E.* IV. f. 35. where it is ſaid by *Needham*, that if a leaſe be made of land wherein there is tin, or iron, or lead, or coals, or quarry, and the leſſor enter and take the tin or other materials, the leſſee ſhall puniſh him for coming upon his land, but not for taking of the ſubſtances. And ſo of great trees: but *Danby* goes farther, and ſaith, the law that gives him the thing, doth likewiſe give him means to come by it; but they both agree that the intereſt is in the leſſor: and thus much for the feiſure.

FOR the grant, it is not ſo certain a badge of property as the other two; for a man may have a property, and yet not grantable, becauſe it is turned into a right, or otherwiſe ſuſpended. And therefore it is true, that by the book in 21 *H.* VI. that if the leſſor grant the trees, the grantee ſhall not take them, no not after the leaſe expired; becauſe his property is but *de futuro*, expectant; but 'tis as plain on the other ſide that the leſſee cannot grant them, as was reſolved in two notable caſes, namely the caſe of *Marwood* and *Sanders* 41 El. *in communi banco*; where it was ruled, that the tenant of the inheritance may make a feoffment with exception of timber trees; but that if leſſee for life or years ſet over his eſtate with an exception of the trees, the exception is utterly void; and the like reſolution was in the caſe between *Foſter* and *Mills* plaintiff, and *Spencer* and *Beord* defendant, 28 *Eliz.* *rot.* 820.

Marwood and *Sanders*. C.

Foſter and *Spencer*'s caſe

NOW come we to the authorities, which have an appearance to be againſt us, which are not many, and they be eaſily anſwered not by diſtinguiſhing ſubtilly, but by marking the books adviſedly.

1. THERE be two books that ſeem to croſs the authorities touching the intereſt of the windfalls, 7 *H.* VI. and 44 *E.* III. f. 44. where, upon waſte brought and aſſigned in the ſucciſion of trees, the juſtification is, that they were overthrown by wind, and ſo the leſſee took them for fuel, and allowed for a good plea; but theſe books are reconciled two ways: firſt, look into both the juſtifications, and you ſhall find that the plea did not rely only in that they were windfalls, but couples it with this that they were firſt ſear, and then overthrown by wind; and that makes an end of it, for ſear trees belong to the leſſee, ſtanding or felled, and you have a ſpecial replication in the book of 44 *E.* III. that the wind did but rend them, and buckle them, and that they bore fruit two years after. And 2dly, you have ill luck with your windfalls, for they be ſtill apple-trees which are but waſtes *per accidens*, as willows, or thorns are in the ſight of a houſe; but when they are once felled, they are clearly matter of fuel.

7 H. 6. 44 E. 3. f. 44.

5 H. 4. f. 29. 1 Ma. f. 90. ANOTHER kind of authorities, that make ſhew againſt us; are thoſe that ſay that the leſſee ſhall puniſh the leſſor in treſpaſs for taking the trees, which are 5 *H.* IV. f. 29. and 1 *Mar. Dier.* f. 90. *Mervin*'s caſe; and you might add if you will 9 *E.* IV. the caſe vouched before, unto which the anſwer is, that treſpaſs muſt be underſtood for the ſpecial property, and not for the body

body of the tree; for thoſe two books ſpeak not a word, what he ſhall recover, nor that it ſhall be to the value. And therefore 9 *E.* IV. is a good expoſitor, for that diſtinguiſheth where the other two books ſpeak indefinitely; yea, but 5 *H.* IV. goes farther, and ſaith, that the writ ſhall purport *arbores ſuas*, which is true in reſpect of the ſpecial property; neither are writs to be varied according to ſpecial caſes, but are framed to the general caſe, as upon lands recovered in value in tail, the writ ſhall ſuppoſe *donum* a gift.

AND the third kind of authority is ſome books (as 13 *H.* VII. f. 9.) that ſay, that treſpaſs lies not by the leſſor againſt the leſſee for cutting down trees, but only waſte; but that it is to be underſtood of treſpaſs *vi & armis*, and would have come fitly in queſtion, if there had been no ſeiſure in this caſe. 13 H. 7. f. 9.

UPON all which I conclude, that the whole current of authorities proveth the properties of the trees upon ſeverance to be in the leſſor by the rules of the common law; and that although the common law would not ſo far protect the folly of the leſſor, as to give him remedy by action, where the ſtate was created by his own act; yet the law never took from him his property; ſo that as to the property before the ſtatute and ſince, the law was ever one.

NOW come I to the third aſſertion, that the ſtatute of *Glouceſter* hath not transferred the property of the leſſee upon an intendment of recompenſe to the leſſor; which needs no long ſpeech: it is grounded upon a probable reaſon, and upon one ſpecial book.

THE reaſon is, that damages are a recompenſe for property: and therefore that the ſtatute of *Glouceſter* giving damages ſhould exclude property; the authority ſeems to be 12 *E.* IV. f. 8. where *Catesbey* affirming that the leſſee at will ſhall have the great trees, as well as leſſee for years or life: *Fairfax* and *Jennings* correct it with a difference, that the leſſor may take them in the caſe of tenant at will, becauſe he hath no remedy by the ſtatute, but not in caſe of the termors. 12 E. 4. f. 8.

THIS conceit may be reaſonable thus far, that the leſſee ſhall not both ſeiſe and bring waſte; but if he ſeiſe, he ſhall not have his action; if he recover by action, he ſhall not ſeiſe: for a man ſhall not have both the thing and recompenſe; it is a bar to the higheſt inheritance (the kingdom of heaven) *receperunt mercedem ſuam.* But at the firſt, it is at his election, whether remedy he will uſe, like as in the caſe of treſpaſs; where if a man once recover in damages, it hath concluded and turned the property. Nay, I invert the argument upon the force of the ſtatute of *Glouceſter* thus: that if there had been no property at common law; yet the ſtatute of *Glouceſter* by reſtraining the waſte, and giving an action, doth imply a property, whereto a better caſe cannot be put than the caſe upon the ſtatute *de donis conditionalibus*, where there are no words to give any reverſion or remainder; and yet the ſtatute giving a *formedon*, where it lay not before, being but an action, implies an actual reverſion and remainder. A ſtatute giving an action impliеth an intereſt.

THUS have I paſſed over the firſt main part, which I have inſiſted upon the longer, becauſe I ſhall have uſe of it for the clearing of the ſecond.

NOW to come to the force of the clauſe, *abſque impetitione vaſti.* This clauſe muſt of neceſſity work in one of theſe degrees, either by way of grant of property, or by way of power and liberty knit to the ſtate, or by way of diſcharge of action; whereof the firſt two I reject, the laſt I receive.

No grant of property.

THEREFORE I think the other ſide will not affirm, that this clauſe amounts to a grant of trees; for then according to the reſolution in *Herlackenden*'s caſe, they ſhould go to the executors, and the leſſee might grant them over, and they might be taken after the ſtate determined. Now it is plain that this liberty is created with the eſtate, paſſeth with the eſtate, and determines with the eſtate.

5 H. 5.

THAT appears by 5 *Hen.* V. where it is ſaid, that if leſſee for years without impeachment of waſte accept a confirmation for life, the privilege is gone.

3 E. 3. 28 H. 8.

AND ſo are the books in 3 *E.* III. and 28 *H.* VIII. that if a leaſe be made without impeachment of waſte *pur autre vie*, the remainder to the leſſee for life, the privilege is gone, becauſe he is in of another eſtate; ſo then plainly it amounts to no grant of property, neither can it any ways touch the property, nor enlarge the eſpecial property of the leſſee: for will any man ſay, that if you put *Marwood* and *Sanders*'s caſe of a leaſe without impeachment of waſte, that he may grant the land with the exception of the trees any more than an ordinary leſſee? Or ſhall the windfalls be more his in this caſe, than in the other? for he was not impeachable of waſte for windfalls no more than where he hath the clauſe. Or will any man ſay, that if a ſtranger commit waſte, ſuch a leſſee may ſeiſe? theſe things I ſuppoſe no man will affirm. Again, why ſhould not a liberty or privilege in law be as ſtrong as a privilege in fact? as in the caſe of tenant after poſſibility: Or where there is a leſſee for life the remainder for life? for in theſe caſes they are privileged from waſte, and yet that trenches not the property.

NOW therefore to take the ſecond courſe, that it ſhould be as a real power annexed to the ſtate; neither can that be, for it is the law that moldeth eſtates, and not mens fancies. And therefore if men by clauſes like voluntaries in muſick run not upon the grounds of law, and do reſtrain an eſtate more than the law reſtrains it, or enable an eſtate more than the law enables it, or guide an eſtate otherwiſe than the law guides it, they be mere repugnancies and vanities. And therefore if I make a feoffment in fee, provided the feoffee ſhall not fell timber, the clauſe of condition is void. And ſo on the other ſide, if I make a leaſe with a power that he ſhall fell timber, it's void.

SO if I make a leaſe with a power that he may make feoffment, or that he may make leaſes for forty years, or that if he make default, I ſhall not be received, or that the leſſee may do homage; theſe are plainly void, as againſt law, and repugnant to the ſtate. No, this cannot be done by way of uſe, except the words be apt, as is *Mildmay*'s caſe: neither is this clauſe in the ſenſe that they take it, any better.

THEREFORE laying aſide theſe two conſtructions, whereof the one is not maintained to be, the other cannot be: let us come to the true ſenſe of this clauſe, which is by way of diſcharge of the action, and no more; wherein I will ſpeak firſt of the words, then of the reaſon, then of the authorities which prove our ſenſe, then of the practice, which is pretended to prove theirs; and laſtly, I will weigh the miſchief how it ſtands for our conſtruction or theirs.

IT is an ignorant miſtaking of any man to take impeachment for *impedimentum*, and not for *impetitio*; for it is true that *impedimentum* doth extend to all hindrances, or diſturbances, or interruptions, as well in *pais* as judicial. But *impetitio* is merely a judicial claim, or interruption by ſuit in law, and upon the matter all one with *implacitatio*. Wherein firſt we may take light

light of the derivation of *impetitio*, which is a compound of the prepoſition *in*, and the verb *peto*, whereof the verb *peto* it ſelf doth ſignify a demand, but yet properly ſuch a demand as is not *extra judicial:* for the words *petit judicium*, *petit auditum brevis*, &c. are words of acts judicial; as for the demand in *pais*, it is rather *requiſitio* than *petitio*, as *licet ſaepius requiſitus*; ſo much for the verb *peto*. But the prepoſition *in* enforceth it more, which ſignifies againſt, as *Cicero in Verrem*, *in Catilinam*, and ſo in compoſition, to inveigh is to ſpeak againſt: ſo it is ſuch a demand only where there is a party raiſed to demand againſt, that is an adverſary, which muſt be in a ſuit in law; and ſo it is uſed in records of law.

As *Coke* lib. 1. f. 17. *Porter*'s caſe, it was pleaded in bar, that *dicta domina Regina nunc ipſos Johannem & Henricum Porter petere ſeu occaſionare non debet*, that is *implacitare*.

So likewiſe *Coke* l. 1. f. 27. caſe of *Alton* woods, *quod dicta domina regina nunc ipſum proinde aliqualiter impetere ſeu occaſionare non debet.*

So in the book of entries f. 1. *litera* D. 15 H. VII. rot. 2. *inter placita Regis, & ſuper hoc venit W. B. Commonachus abbatis W. loci illius ordinarii, gerenſque vices ipſius abbatis, ad quoſcunque clericos de quolibet crimine coram Domino Rege impetitos ſive irritatos calumniand.* So much *ex vi & uſu termini.*

For reaſon; firſt, it ought to be conſidered, that the puniſhment of waſte is ſtrict and ſevere, becauſe the penalty is great, treble damages, and the place waſted: and again, becauſe the leſſee muſt undertake for the acts of ſtrangers: whereupon I infer, that the reaſon which brought this clauſe in uſe, *ab initio*, was caution to ſave, and to free men from the extremity of the penalty, and not any intention to countermand the property.

Add to this that the law doth aſſign in moſt caſes double remedy, by matter of ſuit, and matter in *pais*; for diſſeiſins, actions and entries; for treſpaſſes, action and ſeiſure; for nuſances, action and abatement: and as *Littleton* doth inſtruct us, one of theſe remedies may be releaſed without touching the other. If the diſſeiſee releaſe all actions, ſaith *Littleton*, yet my entry remains; but if I releaſe all demands or remedies, or the like words of a general nature, it doth releaſe the right itſelf. And therefore I may be of opinion, that if there be a clauſe of grant in my leaſe expreſs'd, that if my leſſee or his aſſigns cut down and take away any timber-trees, that I and my heirs will not charge them by action, claim, ſeiſure, or other interruption, either this ſhall inure by way of covenant only, or if you take it to inure by way of abſolute diſcharge, it amounts to a grant of property in the trees, like as the caſe of 31. *Aſſiſ.* I grant, that if I pay not you 10 *l.* *per annum* at ſuch feaſts, you ſhall diſtrain for it in my manor of *Dale*, tho' this ſound executory in power, yet it amounts to a preſent grant of a rent. So as I conclude that the diſcharge of action the law knows, grant of the property the law knows, but this ſame mathematical power being a power amounting to a property, and yet no property, and knit to a ſtate that cannot bear it, the law knoweth not, *tertium penitus ignoramus.*

31. *Aſſiſ.* A clauſe that founds to a power, amounts to a property, if the ſtate bear it.

For the authorities they are of three kinds, two by inference, and the third direct.

The firſt I do collect upon the books of 42 *Edw.* III. f. 23, and 24. by the difference taken by *Mowbray*, and agreed by the court, that the law doth intend the clauſe of diſimpeachment of waſte to be a diſcharge ſpecial, and not general or abſolute; for there the principal caſe was, that there was a clauſe in the leaſe, that the leſſor ſhould not demand any right, claim, or challenge

42 E. 3. f. 23, 24.

challenge in the lands during the life of the leſſee. It is reſolved by the book, that it is no bar in waſte; but that if the clauſe had been, that the leſſee ſhould not have been impeached for waſte, clearly a good bar; which demonſtrates plainly, that general words, be they never ſo loud and ſtrong, bear no more than the ſtate will bear, and to any other purpoſe are idle. But ſpecial words that inure by way of diſcharge of action, are good and allowed by law.

4 E. 2. *Fitzh.* tit. waſte 15. 17 E. 3. f. 7. *Fitzh.* tit. waſte, 101.

THE ſame reaſon is of the books 4 *Ed.* II. *Fitzh.* tit. waſte 15 and 17 *E.* III. f. 7. *Fitzh.* tit. waſte 101. where there was a clauſe, *Quod liceat facere commodum ſuum meliori modo quo poterit.* Yet ſaith *Skipwith* doth this amount, that he ſhall for the making of his own profit diſinherit the leſſor? *Nego conſequentiam*; ſo that ſtill the law allows not of the general diſcharge, but of the ſpecial that goeth to the action.

9 H. 6. f. 35. *Fitzh.* tit. waſte 39. 32 H. 8 Dyer. f. 47.

THE ſecond authority by inference is out of 9 *H.* VI. f. 35. *Fitzh.* tit. waſte 39. and 32 *H.* VIII. *Dyer* f. 47. where the learning is taken, that notwithſtanding this clauſe be inſerted into a leaſe, yet a man may reſerve unto himſelf remedy by entry: but ſay I, if this clauſe ſhould have that ſenſe, which they on the other ſide would give it; namely, that it ſhould amount to an abſolute privilege and power of diſpoſing, then were the proviſo flat repugnant, all one as if it were *abſque impetitione vaſti*, *proviſo quod non faciet vaſtum*, which are contradictories; and note well that in the book of 9 *H.* VI. the proviſo is *quod non faciat vaſtum voluntarium in domibus*; which indeed doth but abridge in one kind, and therefore may ſtand without repugnancy: but in the latter book it is general, that is to ſay *abſque impetitione vaſti, & ſi contigerit ipſum facere vaſtum tunc licebit reintrare.* And there *Shelley* making the objection that the condition was repugnant, it is ſalved thus, *ſed aliqui tenuerunt*, that this word *impetitione vaſti* is to be underſtood that he ſhall not be impleaded by waſte, or puniſhed by action, and ſo indeed it ought: thoſe *aliqui recte tenuerunt.*

27 H. 6. *Fitzh.* tit. waſte, 8.

FOR the authorities direct, they are two, the one 27 *H.* VI. *Fitzh.* tit. waſte 8. where a leaſe was made without impeachment of waſte, and a ſtranger committed waſte, and the rule is, that the leſſee ſhall recover in treſpaſs only for the crop of the tree, and not for the body of the tree. It is true it comes by a *dicitur*, but it is now a *legitur*; and a *quaere* there is, and reaſon, or elſe this long ſpeech were time ill ſpent.

AND the laſt authority is the caſe of Sir *Moyle Finch* and his mother, referred to my Lord *Wrey* and Sir *Roger Manwood*, reſolved upon conference with other of the judges vouch'd by *Wrey* in *Herlackenden*'s caſe, and reported to my Lord Chief Juſtice, here *preſent*, as a reſolution of law, being our very caſe.

Statute *de Marlebridge.*

AND for the caſes to the contrary, I know not one in all the law direct: they preſs the ſtatute of *Marlebridge*, which hath an exception in the prohibition, *firmarii non facient vaſtum*, &c. *niſi ſpecialem inde habuerint conceſſionem per ſcriptum conventionis, mentionem faciens, quod hoc facere poſſint.* This preſſeth not the queſtion; for no man doubteth, but it will excuſe in an action of waſte; and again, *niſi habeant ſpecialem conceſſionem* may be meant of an abſolute grant of the trees themſelves: and otherwiſe the clauſe, *abſque impetitione vaſti* taketh away the force of the ſtatute, and looſeth what the ſtatute bindeth; but it toucheth not the property at common law.

Littleton.

FOR *Littleton*'s caſe in his title of conditions, where it is ſaid, that if a feoffment in fee be made upon condition, that the feoffee ſhall infeoff the huſband and wife, and the heirs of their two bodies; and that the huſband die,

die, that now the feoffee ought to make a leaſe without impeachment of waſte to the wife, the remainder to the right heirs of the body of her huſband and her begotten; whereby it would be inferred, that ſuch a leſſee ſhould have equal privilege with tenant in tail: the anſwer appears in *Littleton*'s own words, which is, that the feoffee ought to go as near the condition, and as near the intent of the condition as he may, but to come near is not to reach, neither doth *Littleton* undertake for that.

As for *Culpepper*'s caſe, it is obſcurely put and concluded in diviſion of opinion; but yet ſo as it rather makes for us. The caſe is 2 *Eliz. Dyer* f. 184. and is in effect this: a man makes a leaſe for years, excepting timber-trees, and afterwards makes a leaſe without impeachment of waſte to *John a Style*, and then granteth the land and trees to *John a Down*, and binds himſelf to warrant and ſave harmleſs *John a Down* againſt *John a Style*; *John a Style* cutteth down the trees, the queſtion was whether the bond were forfeited, and that queſtion reſorteth to the other queſtion; whether *John a Style*, by virtue of ſuch leaſe, could fell the trees, and held by *Weſton* and *Brown* that he could not: which proves plainly for us that he had no property by that clauſe in the tree; though it is true that in that caſe the exception of the trees turneth the caſe, and ſo in effect it proveth neither way. *Culpepper*'s caſe. 2 Eliz. *Dyer* f. 184.

For the practice, if it were ſo ancient and common, as is conceived; yet ſince the authorities have not approved, but condemned it, it is no better than a popular error: it is but *pedum viſa eſt via*, not *recta viſa eſt via*. But I conceive it to be neither ancient nor common. It is true I find it firſt in 19 *E.* II. (I mean ſuch a clauſe) but it is one thing to ſay that the clauſe is antient; and it is another thing to ſay, that this expoſition, which they would now introduce, is ancient. And therefore you muſt note that a practice doth then expound the law, when the act which is practiſed, were merely tortious or void, if the law ſhould not approve it; but that is not the caſe here; for we agree the clauſe to be lawful: nay, we ſay that it is in no ſort *inutile*, but there is uſe of it, to avoid this ſevere penalty of treble damages. But to ſpeak plainly, I will tell you how this clauſe came in from 13 of *E.* I. till about 12 of *E.* IV. The *ſtate tail* though it had the qualities of an inheritance, yet it was without power to alien; but as ſoon as that was ſet at liberty by common recoveries, then there muſt be found ſome other device, that a man might be an abſolute owner of the land for the time, and yet not enabled to alien, and for that purpoſe was this clauſe found out: for you ſhall not find in one amongſt an hundred, that farmers had it in their leaſes; but thoſe that were once owners of the inheritance, and had put it over to their ſons or next heirs, reſerved ſuch a beneficial ſtate to themſelves. And therefore the truth is, that the flood of this uſage came in with perpetuities, ſave that the perpetuity was to make an inheritance like a ſtem for life, and this was to make a ſtem for life like an inheritance: both concurring in this, that they preſume to create phantaſtical eſtates, contrary to the ground of law. Practice. 19 E. 2.

And therefore it is no matter, though it went out with the perpetuities, as it came in, to the end that men that have not the inheritance ſhould not have power to abuſe the inheritance.

And for the miſchief and conſideration of *bonum publicum*, certainly this clauſe with this oppoſition tendeth but to make houſes ruinous, and to leave no timber upon the ground to build them up again; and therefore let men in God's name, when they eſtabliſh their ſtates, and plant their ſons or

kinſmen in the inheritance of ſome portions of their lands, with reſervation of the freehold to themſelves, uſe it, and enjoy it in ſuch ſort, as may tend *ad aedificationem*, and not *ad deſtructionem*; for that's good for poſterity, and for the ſtate in general.

And for the timber of this realm, 'tis *vivus theſaurus regni*; and 'tis the matter of our walls, walls not only of our houſes, but of our iſland: ſo as 'tis a general diſinheriſon to the kingdom to favour that expoſition, which tends to the decay of it, being ſo great already; and to favour waſte when the times themſelves are ſet upon waſte and ſpoil. Therefore ſince the reaſon and authorities of law, and the policy of eſtate do meet, and that thoſe that have, or ſhall have ſuch conveyances, may enjoy the benefit of that clauſe to protect them in a moderate manner, that is, from the penalty of the action; it is both good law and good policy for the kingdom, and not injurious or inconvenient for particulars, to take this clauſe ſtrictly, and therein to affirm the laſt report, and ſo I pray judgment for the plaintiff.

The ARGUMENT in

LOWES CASE

OF

TENURES;

In the KING's-BENCH.

THE manor of *Alderwaſley* parcel of the Duchy, and lying out of the county *Palatine* was (before the Duchy came to the crown) held of the King by knight's-ſervice *in capite*. The land in queſtion was held of the ſaid manor in ſocage. The Duchy and this manor parcel thereof deſcended to King *Henry* IV. King *Henry* VIII. by letters patent the 19. of his reign granted this manor to *Anthony Lowe*, grandfather of the ward, and then tenant of the land in queſtion, reſerving 26 *l.* 10 *s.* rent and fealty, *tantum pro omnibus ſervitiis*, and this patent is under the Duchy-ſeal only. The queſtion is how this tenancy is held, whether *in capite* or in ſocage.

The caſe reſteth upon a point, unto which all the queſtions ariſing are to be reduced.

The firſt is, whether this tenancy being by the grant of the King, of the manor to the tenant, grown to an unity of poſſeſſion with the manor, be held as the manor is held, which is expreſſed in the patent to be in ſocage.

The ſecond, whether the manor it ſelf be held in ſocage according to the laſt reſervation; or *in capite* by revivor of the antient ſeigniory, which was *in capite* before the duchy came to the crown.

Therefore my firſt propoſition is, that this tenancy (which without all colour is no parcel of the manor) cannot be comprehended within the tenure, reſerved upon the manor, but that the law createth a ſeveral and diſtinct

diſtinct tenure thereupon; and that not guided according to the expreſs tenure of the manor; but merely *ſecundum normam legis*, by the intendment and rule of law, which muſt be a tenure by knight's-ſervice *in capite*.

And my ſecond propoſition is, that admitting that the tenure of the tenancy ſhould enſue the tenure of the manor: yet nevertheleſs the manor it ſelf which was firſt held of the crown *in capite*, the tenure ſuſpended by the conqueſt of the Duchy to the crown, being now conveyed out of the crown under the duchy-ſeal only (which hath no power to touch or carry any intereſt, whereof the King was veſted in right of the crown) is now ſo ſevered and disjoined from the ancient ſeigniory, which was *in capite*, as the ſame ancient ſeigniory is revived, and ſo the new reſervation void; becauſe the manor cannot be charged with two tenures.

This caſe concerneth one of the greateſt and faireſt flowers of the crown, which is the King's tenures, and that in their creation; which is more than their preſervation: for if the rules and maxims of law in the firſt raiſing of tenures *in capite* be weakened, this nips the flower in the bud, and may do more hurt by a reſolution in law, than the loſſes, which the King's tenures do daily receive by oblivion or ſuppreſſion, or the neglect of officers, or the iniquity of jurors, or other like blaſts, whereby they are continually ſhaken: and therefore it behoveth us of the King's council to have a ſpecial care of this caſe, as much as in us is, to give ſatisfaction to the court. Therefore before I come to argue theſe two points particularly, I will ſpeak ſomething of the favour of law towards tenures *in capite*, as that which will give a force and edge to all that I ſhall ſpeak afterwards.

The King's tenures may take more hurt by a reſolution in law than by many ſuppreſſions or concealments.

The conſtitution of this kingdom appeareth to be a free monarchy in nothing better than in this; that as there is no land of the ſubject that is charged to the crown by way of tribute, or tax, or tallage, except it be ſet by parliament: ſo on the other ſide there is no land of the ſubject, but is charged to the crown by tenure, mediate or immediate, and that by the grounds of the common law. This is the excellent temper and commixture of this eſtate, bearing marks of the ſovereignty of the King, and of the freedom of the ſubject from tax, whoſe poſſeſſions are *feodalia*, not *tributaria*.

No land in the kingdom of *England* charged by way of tribute, and all land charged by way of tenure.

Tenures, according to the moſt general diviſion, are of two natures, the one containing matter of protection, and the other matter of profit: that of protection is likewiſe double, divine protection and military. The divine protection is chiefly procured by the prayers of holy and devout men; and great pity it is, that it was depraved and corrupted with ſuperſtition. This begot the tenure in frankalmoigne, which though in burthen it is leſs than in ſocage, yet in virtue it is more than knight's-ſervice. For we read how, during the while *Moſes* in the mount held up his hands, the *Hebrews* prevailed in battel, as well as when *Elias* prayed, rain came after drought, which made the plough go; ſo that I hold the tenure in frankalmoigne in the firſt inſtitution indifferent to knight's-ſervice and ſocage. Setting apart this tenure, there remaineth the other two, that of knight's-ſervice, and that of ſocage; the one tending chiefly to defence and protection, the other to profit and maintenance of life. They are all three comprehended in the antient verſe, *Tu ſemper ora, tu protege, tuque labora*. But between theſe two ſervices, knight's-ſervice and ſocage, the law of *England* makes a great difference: for this kingdom (my lords) is a ſtate neither effeminate, nor merchant-like; but the laws give the honour unto arms and military ſervice,

ſervice, like the laws of a nation, before whom *Julius Caeſar* turned his back, as their own prophet ſays; *Territa quaeſitis oſtendit terga Britannis.* And therefore howſoever men upon huſband-like conſiderations of profit eſteem of ſocage tenures; yet the law that looketh to the greatneſs of the kingdom, and proceedeth upon conſiderations of eſtate, giveth the preheminence altogether to knight's-ſervice.

We ſee that the ward, who is ward for knight's-ſervice-land, is accounted in law diſparaged, if he be tender'd a marriage of the burghers parentage: and we ſee that the knights fees were by the ancient laws the materials of all nobility; for that it appears by diverſe records how many knights fees ſhould by computation go to a barony, and ſo to an earldom. Nay, we ſee that in the very ſummons of parliament, the knights of the ſhire are required to be choſen *milites gladio cincti*; ſo as the very call, though it were to council, bears a mark of arms and habiliments of war. To conclude, the whole compoſition of this warlike nation, and the favours of law tend to the advancement of military virtue and ſervice.

But now farther, amongſt the tenures by knight's-ſervice, that of the King *in capite* is the moſt high and worthy; and the reaſon is double; partly becauſe it is held of the King's crown and perſon; and partly becauſe the law createth ſuch a privity between the line of the crown, and the inheritors of ſuch tenancies, as there cannot be an alienation without the King's licence, the penalty of which alienation was by the common law the forfeiture of the ſtate itſelf, and by the ſtatute of *E.* III. is reduced to fine and ſeiſure. And although this alſo has been unworthily termed by the vulgar (not *capite*) captivity and thraldom; yet that which they count bondage, the law counteth honour, like to the caſe of tenants in tail of the King's advancement, which is a great reſtraint by the ſtatute of 34 *H.* VIII. but yet by that ſtatute it is imputed for an honour. This favour of law to the tenure by knight's ſervice *in capite* produceth this effect, that whereſoever there is no expreſs ſervice effectually limited, or whereſoever that, which was once limited, faileth, the law evermore ſupplieth a tenure by knight's-ſervice *in capite*; if it be a blank once——that the law muſt fill it up, the law ever with her own hand writes tenure by knight's-ſervice *in capite*. And therefore the reſolution was notable by the judges of both benches, that where the King confirmed to his farmers tenants for life, *tenend' per ſervitia debita*, this was a tenure *in capite*: for other ſervices are *ſervitia requiſita*, required by the words of patents or grants; but that only is *ſervitium debitum*, by the rules of law.

44 E. 3. f. 45.

The courſe therefore that I will hold in the proof of the firſt main point, ſhall be this. Firſt I will ſhew, maintain, and fortify my former grounds, that whereſoever the law createth the tenure of the King, the law hath no variety, but always raiſeth a tenure *in capite*.

Secondly, that in the caſe preſent, there is not any ſuch tenure expreſſed, as can take place, and exclude the tenure in law, but that there is as it were a lapſe to the law.

And laſtly, I will ſhew in what caſes the former general rule receiveth ſome ſhew of exception; and will ſhew the difference between them and our caſe; wherein I ſhall include an anſwer to all that hath been ſaid on the other ſide.

For my firſt propoſition I will divide into four branches: firſt, I ſay, where there is no tenure reſerved, the law createth a tenure *in capite*; ſecondly, where the tenure is uncertain; thirdly, where the tenure reſerved

is

is impoſſible or repugnant to law; and laſtly, where a tenure once created is afterwards extinct.

For the firſt, if the King give lands and ſay nothing of the tenure, this is a tenure *in capite*; nay, if the King give whiteacre and blackacre, and reſerves a tenure only of whiteacre, and that a tenure expreſſed to be in ſocage; yet you ſhall not for fellowſhip ſake (becauſe they are in one patent) intend the like tenure of blackacre; but that ſhall be held *in capite*. *Per Priſot in fine* 33 H. 6. f. 7. & H. 7. f. 3. b.

So if the King grant land, held as of a manor, with warranty, and a ſpecial clauſe of recompenſe, and the tenant be impleaded, and recover in value, this land ſhall be held *in capite*, and not of the manor.

So if the King exchange the manor of *Dale* for the manor of *Sale*, which is held in ſocage, although it be by the word *excambium*; yet that goeth to equality of the ſtate, not of the tenure, and the manor of *Dale* (if no tenure be expreſſed) ſhall be held *in capite*; ſo much for ſilence of tenure.

For the ſecond branch, which is incertainty of tenure; firſt, where an *ignoramus* is found by office, this by the common law is a tenure *in capite*, which is moſt for the King's benefit; and the preſumption of law is ſo ſtrong, that it amounts to a direct finding or affirmative, and the party ſhall have a negative or traverſe, which is ſomewhat ſtrange to a thing indefinite. 5 Mar. *Dyer*. 14 Eliz. *Dyer*. 306.

So if in ancient time, one held of the King, as of a manor by knight's-ſervice, and the land return to the King by attainder, and then the King granteth it *tenend' per fidelitatem tantum*, and it returneth the ſecond time to the King, and the King granteth it *per ſervitia antehac conſueta*; now becauſe of the incertainty, neither ſervice ſhall take place, and the tenure ſhall be *in capite*, as was the opinion of you my lord chief juſtice, where you were commiſſioner to find an office after *Auſtin*'s death. *Auſtin*'s office.

So if the King grant land *tenend' de manerio de Eaſtgreenwich vel de honore de Hampton*; this is void, for the non-certainty, and ſhall be held of the King *in capite*.

For the third branch, if the King limit land to be diſcharged of tenure, as *abſque aliquo inde reddendo*, this is a tenure *in capite*; and yet if one ſhould go to the next, *ad proximum*, it ſhould be a ſocage, for the leaſt is next to none at all: but you may not take the King's grant by argument; but where they cannot take place effectually and punctually, as they are expreſſed, there you ſhall reſort wholly to the judgment of law. 33 H. 6. f. 7.

So if the King grant land *tenend' ſi frankment come il en ſon corone*, this is a tenure *in capite*. 14 H. 6. f. 12.

If land be given to be held of a lordſhip not capable, as of *Salisbury* plain, or a corporation not *in eſſe*, or of the manor of a ſubject, this is a tenure *in capite*. *Merefeild*'s caſe.

So if land be given to hold by impoſſible ſervice, as by performing the office of the ſheriff of *Yorkſhire* (which no man can do but the ſheriff) and fealty for all ſervice, this is a tenure *in capite*.

For the fourth branch, which cometh neareſt to our caſe; let us ſee where a ſeigniory was once, and is after extinguiſhed; this may be in two manners, by releaſe in fact, or by unity of poſſeſſion, which is a releaſe or diſcharge in law.

And therefore let the caſe be, that the King releaſeth to his tenant, that holds of him in ſocage; this releaſe is good, and the tenant ſhall hold now *in capite*, for the former tenure being diſcharged, the tenure in law ariſeth. *Vid.* 30 H. 8. *Dyer*. 8 H. 7. f. 13.

1 E. 3. f. 4. fine accept. So the caſe, which is in 1 *E.* III. a fine is levied to *J. S.* in tail, the remainder ouſter to the King, the ſtate tail ſhall be held *in capite*, and the firſt tenancy, if it were in ſocage, by the unity of the tenancy, ſhall be diſcharged, and a new raiſed thereupon: and therefore the opinion, or rather the *quaere* in *Dyer* no law.

4 & 5 P. M. Thus much for my major propoſition, now for the minor, or the aſſumption, it is this: firſt, that the land in queſtion is diſcharged of tenure by the purchaſe of the manor; then that the reſervation of the ſervice upon the manor cannot poſſibly inure to the tenancy; and then if a corruption be of the firſt tenure, and no generation of the new; then cometh in the tenure *per normam legis*, which is *in capite*.

And the courſe of my proof ſhall be *ab enumeratione partium*, which is one of the cleareſt and moſt forcible kinds of argument.

If this parcel of land be held by fealty and rent *tantum*, either it is the old fealty before the purchaſe of the manor, or it is the new fealty reſerved and expreſſed upon the grant of the manor; or it is a new fealty raiſed by intendment of law in conformity and congruity of the fealty reſerved upon the manor; but none of theſe, *ergo*, &c.

That it ſhould be the old fealty, is void of ſenſe; for it is not *ad eoſdem terminos*. The firſt fealty was between the tenancy and the manor, that tenure is by the unity extinct. Secondly, that was a tenure of a manor, this is a tenor in groſs. Thirdly, the rent of 26 *l.* 10 *s.* muſt needs be new, and will you have a new rent with an old fealty? Theſe things are *portenta in lege*; nay, I demand, if the tenure of the tenancy (*Lowes* tenure) had been by knight's-ſervice, would you have ſaid that had remained? No, but that it was altered by the new reſervation, *ergo* no colour of the old fealty.

That it cannot be the new fealty is alſo manifeſt; for the new reſervation is upon the manor, and this is no part of the manor: for if it had eſcheated to the King in an ordinary eſcheat, or come to him upon a *mortmain*, in theſe caſes it had come in lieu of the ſeigniory, and been parcel of the manor, and ſo within the reſervation, but clearly not upon a purchaſe in fact.

Again, the reſervation cannot enure, but upon that which is granted; and this tenancy was never granted, but was in the tenant before; and therefore no colour it ſhould come under the reſervation. But if it be ſaid, that nevertheleſs the ſeigniory of that tenancy was parcel of the manor, and is alſo granted; and although it be extinct in ſubſtance, yet it may be *in eſſe* as to the King's ſervice: this deſerveth anſwer; for this aſſertion may be colourably inferred out of *Carr*'s caſe.

6 Eliz. Coke Lib. 5 f. 30.

King *Edw.* VI. grants a manor, rendring 94 *l.* rent in fee farm *tenendum de Eaſtgreenwich* in ſocage; and after, Queen *Mary* granteth theſe rents amongſt other things *tenendum in capite*, and the grantee releaſed to the heir of the tenant; yet the rent ſhall be *in eſſe*, as to the King, but the land (ſaith the book) ſhall be deviſable by the ſtatute for the whole, as not held *in capite*.

26 Aſſ. pl. 60. And ſo the caſe of the honour of *Pickeringe*, where the King granted the bailywick rendring rent; and after granted the honour, and the bailywick became forfeited, and the grantee took forfeiture thereof; whereby it was extinct, yet the rent remaineth as to the King out of the bailywick extinct.

These two caſes partly make not againſt us, and partly make for us: there be two differences that avoid them. Firſt, there the tenures or rents are *in eſſe* in thoſe caſes for the King's benefit, and here they ſhould be *in eſſe* to the King's prejudice, who ſhould otherwiſe have a more beneficial tenure.

tenure. Again, in theſe caſes the firſt reſervation was of a thing *in eſſe*, at the time of the reſervation; and then there is no reaſon the act ſubſequent of the King's tenant ſhould prejudice the King's intereſt once veſted and ſettled: but here the reſervation was never good, becauſe it is out of a thing extinct in the inſtant.

But the plain reaſon, which turneth *Carr*'s caſe mainly for us, is; for that where the tenure is of a rent or ſeigniory, which is afterwards drowned or extinct in the land; yet the law judgeth the ſame rent or ſeigniory to be *in eſſe*, as to ſupport the tenure: but of what? only of the ſaid rent or ſeigniory, and never of the land itſelf? for the land ſhall be held by the ſame tenure it was before. And ſo is the rule of *Carr*'s caſe, where it is adjudged, that though the rent be held *in capite*, yet the land was nevertheleſs deviſeable for the whole, as no ways charged with that tenure.

Why then in our caſe, let the fealty be reſerved out of the ſeigniory extinct, yet that toucheth not at all the land: and then of neceſſity the land muſt be alſo held; and therefore you muſt ſeek out a new tenure for the land, and that muſt be *in capite*.

And let this be noted once for all, that our caſe is not like the common caſes of a menalty extinct, where the tenant ſhall hold of the lord, as the mean held before; as where the menalty is granted to the tenant, or where the tenancy is granted to the mean, or where the menalty deſcendeth to the tenant, or where the menalty is forejudged. In all theſe caſes the tenancy, I grant, is held as the menalty was held before, and the difference is becauſe there was an old ſeigniory in being; which remaineth untouched and unaltered, ſave that it is drawn a degree nearer to the land, ſo as there is no queſtion in the world of a new tenure: but in our caſe there was no lord paramount, for the manor itſelf was in the crown, and not held at all, nor no ſeigniory of the manor *in eſſe*, ſo as the queſtion is wholly upon the creation of a new ſeigniory, and not upon the continuance of an old.

For the third courſe, that the law ſhould create a new diſtinct tenure by fealty of this parcel, guided by the expreſs tenure upon the manor; it is the probableſt courſe of the three: but yet if the former authorities, I have alledged, be well underſtood and marked, they ſhew the law plainly, that it cannot be; for you ſhall ever take the King's grant *ad idem*, and not *ad ſimile*, or *ad proximum*: no more than in the caſe of the *abſque aliquo reddendo*, or as free as the crown; who would not ſay that in thoſe caſes it ſhould amount to a ſocage tenure? for *minimum eſt nihilo proximum*; and yet they are tenures by knight's ſervice *in capite*. So if the King by one patent paſs two acres, and a fealty reſerved but upon the one of them, you ſhall not reſort to this *ut expreſſum ſervitium regat, vel declaret tacitum*. No more ſhall you in our caſe imply that the expreſs tenure reſerved upon the manor ſhall govern, or declare the tenure of the tenancy, or controul the intendment of law concerning the ſame.

Now will I anſwer the caſes, which give ſome ſhadow on the contrary ſide, and ſhew they have their particular reaſons, and do not impugn our caſe.

First, if the King have land by attainder of treaſon, and grant the land to be held of himſelf, and of other lords, this is no new tenure *per normam legis communis*; but the old tenure *per normam ſtatuti*, which taketh away the intendment of the common law; for the ſtatute directeth it ſo, and otherwiſe the King ſhall do a wrong.

So if the King grant land parcel of the demeſne of a manor *tenendum de nobis*, or reſerving no tenure at all, this is a tenure of the manor, or of the honour, and not *in capite*: for here the more vehement preſumption controuleth the leſs; for the law doth preſume the King hath no intent to diſmember it from the manor, and ſo to loſe his court and the perquiſites.

So if the King grant land *tenendum* by a roſe *pro omnibus ſervitiis*; this is not like the caſes of the *abſque aliquo inde reddendo*, or as free as the crown: for *pro omnibus ſervitiis* ſhall be intended for all expreſs ſervice; whereas fealty is incident, and paſſeth tacit, and ſo it is no impoſſible or repugnant reſervation.

25 H. 6. f. 56. 9.

This is no frankalmoigne.

THE caſe of the frankalmoigne, I mean the caſe where the King grants lands of the Templers to *J. S.* to hold as the Templers did, which cannot be frankalmoigne; and yet hath been ruled to be no tenure by knight's-ſervice *in capite*, but only a ſocage tenure, is eaſily anſwered; for that the frankalmoigne is but a *ſpecies* of a tenure in ſocage with a privilege, ſo the privilege ceaſeth, and the tenure remains.

Wood's caſe.

To conclude therefore, I ſum up my arguments thus; my major is, where *calamus legis* doth write the tenure, it is knight's-ſervice *in capite*. My minor is, this tenure is left to the law, *ergo* this tenure is *in capite*.

FOR the ſecond point I will firſt ſpeak of it according to the rules of the common law, and then upon the ſtatutes of the duchy.

FIRST I do grant, that where a ſeigniory and a tenancy, or a rent and land, or trees and land, or the like primitive and ſecondary intereſt are conjoined in one perſon, yea, though it be in *autre droit*; yet if it be of like perdurable eſtate they are ſo extinct, as by act in law they may be revived, but by grant they cannot.

FOR if a man have a ſeigniory in his own right, and the land deſcend to his wife, and his wife dieth without iſſue, the ſeigniory is revived; but if he will make a feoffment in fee, ſaving his rent, he cannot do it. But there is a great difference, and let it be well obſerved, between *autre capacitie* and *autre droit*; for in caſe of *autre capacitie* the intereſts are *contigua*, and not *continua*, conjoined but not confounded. And therefore if the maſter of an hoſpital have a ſeigniory, and the mayor and commonalty of *St. Albans* have a tenancy, and the maſter of the hoſpital be made mayor, and the mayor grant away the tenancy under the ſeal of the mayor and commonalty, the ſeigniory of the hoſpital is revived.

So between natural capacity and politick, if a man have a ſeigniory to him and his heirs, and a biſhop is tenant, and the lord is made biſhop, and the biſhop before the ſtatute grants away the land under the chapter's ſeal, the ſeigniory is revived.

THE ſame reaſon is between the capacity of the crown and the capacity of the duchy, which is in the King's natural capacity, though illuſtrate with ſome privileges of the crown; if the King have the ſeigniory in the right of his crown, and the tenancy in the right of the duchy (as our caſe is) and make a feoffment of the tenancy, the tenure muſt be revived; and this is by the ground of the common law. But the caſe is the more ſtrong by reaſon of the ſtatute of 1 *H.* IV. 3 *H.* V. and 1 *H.* VII. of the duchy, by which the duchy-ſeal is enabled to paſs lands of the duchy, but no ways to touch the crown; and whether the King be in actual poſſeſſion of the thing that ſhould paſs, or have only a right, or a condition, or a thing in ſuſpenſe (as our caſe is) all is one; for that ſeal will not extinguiſh ſo much as a ſpark of that which is in the right of the crown; and ſo a plain revivor.

AND

And if it be ſaid that a miſchief will follow; for that upon every duchy patent men ſhall not know how to hold, becauſe men muſt go back to the antient tenure, and not reſt in the tenure limited: for this miſchief there grows an eaſy remedy, which likewiſe is now in uſe; which is to take both ſeals, and then all is ſafe.

Secondly, as the King cannot under the duchy-ſeal grant away his antient ſeigniory in the right of his crown; ſo he cannot make any new reſervation by that ſeal, and ſo of neceſſity it falleth to the law to make the tenure: for every reſervation muſt be of the nature of that that paſſeth, as a dean and chapter cannot grant land of the chapter, and reſerve a rent to the dean and his heirs, nor *è converſo:* nor no more can the King grant land of the duchy under that ſeal, and reſerve a tenure to the crown; and therefore it is warily put in the end of the caſe of the duchy in the commentaries, where it is ſaid, if the King make a feoffment of the duchy land, the feoffee ſhall hold *in capite*; but not a word of that it ſhould be by way of expreſs reſervation, but upon a feoffment ſimply, the law ſhall work it and ſupply it.

To conclude, there is direct authority in the point, but that it is *via verſa*; and it was the biſhop of *Saliſbury's* caſe, the King had in the right of the duchy a rent iſſuing out of land, which was monaſtery land, which he had in the right of the crown, and granted away the land under the great ſeal to the biſhop; and yet nevertheleſs the rent continued to the duchy, and ſo upon great and grave advice it was in the duchy decreed: ſo as your lordſhip ſeeth whether you take the tenure of the tenancy, or the tenure of the manor; this land muſt be held *in capite*, and therefore, *&c.*

THE

CASE

OF

REVOCATION of USES,

In the KING's-BENCH.

The caſe ſhortly put without names or dates more than of neceſſity is this.

Sir *John Stanhope* conveys the manor of *Burrough-aſh* to his lady for part of her jointure, and intending (as is manifeſt) not to reſtrain himſelf, nor his ſon, from diſpoſing ſome proportion of that land according to their occaſions, ſo as my lady were at no loſs by the exchange, inſerteth into the conveyance a power of revocation and alteration in this manner; provided that it ſhall be lawful for himſelf and his ſon ſucceſſively to alter, and make void the uſes, and to limit and appoint new uſes, ſo it exceed not the value of 20 *l.* to be computed after the rents then anſwered; and that immediately after ſuch declaration, or making void, the feoffees ſhall ſtand ſeiſed to ſuch new uſes; *Ita quod*, he or his ſon within ſix months after ſuch

declaration; or making void, ſhall aſſure within the ſame town, *tantum terrarum & tenementorum, & ſimilis valoris*, as were ſo revoked, to the uſes expreſſed in the firſt conveyance.

SIR *John Stanhope* his ſon revokes the land in *Burrough-aſh*, and other parcels not exceeding the value of 20 *l.* and within ſix months aſſures to my lady and to the former uſes *Burton-joice*, and other lands; and the jury have found that the lands revoked contain twice ſo much in number of acres, and twice ſo much in yearly value, as the new lands; but yet that the new lands are rented at 21 *l.* and find the lands of *Burrough-aſh*, now out of leaſe formerly made: and that no notice of this new aſſurance was given before the ejectment, but only that Sir *John Stanhope* had by word told his mother, that ſuch an aſſurance was made, not ſhewing or delivering the deed.

THE queſtion is whether *Burrough-aſh* be well revoked; which queſtion divides itſelf into three points.

FIRST, whether the *ita quod* be a void and idle clauſe? for if ſo, then there needs no new aſſurance, but the revocation is abſolute *per ſe*.

THE next is, if it be an effectual clauſe, whether it be purſued or no? wherein the queſtion will reſt, whether the value of the re-aſſured lands ſhall be only computed by rents?

AND the third is, if in other points it ſhould be well purſued, yet whether the revocation can work until a ſufficient notice of the new aſſurance?

AND I ſhall prove plainly, that *ita quod* ſtands well with the power of revocation; and if it ſhould fall to the ground, it draws all the reſt of the clauſe with it, and makes the whole void, and can't be void alone by itſelf.

I SHALL prove likewiſe that the value muſt needs be accounted not a tale value, or an arithmetical value by the rent, but a true value in quantity and quality.

AND laſtly, that a notice is of neceſſity, as this caſe is.

I WILL not deny, but it is a great power of wit to make clear things doubtful; but it is the true uſe of wit to make doubtful things clear, or at leaſt to maintain things that are clear, to be clear, as they are. And in that kind I conceive my labour will be in this caſe, which I hold to be a caſe rather of novelty than difficulty, and therefore may require argument, but will not endure much argument: but to ſpeak plainly to my underſtanding, as the caſe hath no equity in it (I might ſay piety) ſo it hath no great doubt in law.

FIRST therefore this it is, that I affirm, that the clauſe *ſo that, ita quod*, containing the recompenſe, governs the clauſe precedent of the power, and that it makes it wait and expect otherwiſe than as by way of inception, but the effect and operation is ſuſpended, till that part alſo be performed: and if otherwiſe, then I ſay plainly you ſhall not conſtrue by fractions; but the whole clauſe and power is void not *in tanto*, but *in toto*. Of the firſt of them I will give four reaſons.

THE firſt reaſon is, that the wiſdom of the law uſeth to tranſpoſe words according to the ſenſe; and not ſo much to reſpect how the words do take place, but how the acts, which are guided by thoſe words, may take place.

Hill and *Graunger's* caſe, com. f. 171.

HILL and *Graunger's* caſe comment. 171. A man in *Auguſt* makes a leaſe rendering 10 *l.* rent yearly to be paid at the feaſts of *Annunciation* and *Michaelmas*: theſe words ſhall be inverted by law, as if they had been ſet thus, at *Michaelmas* and the *Annunciation*, for elſe he can't have a rent yearly; for there will be fourteen months to the firſt year.

FITZ-WILLIAMS's caſe 2 *Ja. Co.* p. 6. f. 33. It was contained in an indenture of uſes, that Sir *William Fitz-Williams* ſhould have power to alter and change, revoke, determine, and make void the uſes limited: the words are placed diſorderly; for it is in nature firſt to determine the uſes, and after to change them by limitation of new. But the chief queſtion being in the book, whether it might be done by the ſame deed; it is admitted and thought not worth the ſpeaking to, that the law ſhall marſhal the acts againſt the order of the words, that is, firſt to make void, and then to limit. *Fitz-Williams's* caſe, 2 *Jac. Co.* p. 6. f. 33.

So if I convey land and covenant with you to make farther aſſurance, ſo that you require it of me, there though the requeſt be placed laſt, yet it muſt be acted firſt.

So if I let land to you for a term, and ſay farther, it ſhall be lawful for you to take twenty timber-trees to erect a new tenement upon the land; ſo that my bailiff do aſſign you where you ſhall take them, here the aſſignment, though laſt placed, muſt precede. And therefore the Grammarians do infer well upon the word *period*, which is a full and compleat clauſe or ſentence, that it is *complexus orationis circularis*: for as in a circle there is not *prius* nor *poſterius*, ſo in one ſentence you ſhall not reſpect the placing of words; but though the words lie in length, yet the ſenſe is round, ſo as *prima erunt noviſſima, & noviſſima prima.* For though you cannot ſpeak all at once ſo, yet you muſt conſtrue and judge upon all at once.

To apply this; I ſay theſe words *ſo that*, though *loco & textu poſteriora*, yet they be *poteſtate & ſenſu priora*: as if they had been penned thus, that it ſhall be lawful for Sir *Thomas Stanhope*, ſo that he aſſure lands, *&c.* to revoke; and what difference between, ſo that he aſſure, he may revoke, or he may revoke, ſo that he aſſure: for you muſt either make the *ſo that* to be precedent or void, as I ſhall tell you anon. And therefore the law will rather invert the words, than pervert the ſenſe.

But it will be ſaid, that in the caſes I put, it is left indefinite, when the act laſt limited ſhall be performed; and ſo the law may marſhal it, as may ſtand with poſſibility; and ſo if it had been in this caſe no more but (*ſo that* Sir *Thomas* or *John* ſhould aſſure new lands) and no time ſpoken of, the law might have intended it precedent. But in this caſe it is preciſely put to be at any time within ſix months after the declaration, and therefore you cannot vary in the times.

To this I anſwer, that the new aſſurance muſt be in deed in time after the inſtrument or deed of the declaration; but on the other ſide it muſt be time precedent to the operation of the law, by determining the uſes thereupon: ſo as it is not to be applied ſo much to the declaration itſelf, but to the warrant of the declaration. It ſhall be lawful, *ſo that*, *&c.* And this will appear more plainly by my ſecond reaſon, to which now I come; for as for the cavillation upon the word *immediately*, I will ſpeak to it after.

My ſecond reaſon therefore is out of the uſe and ſignification of this conjunction or bond of ſpeech, *ſo that*: for no man will make any great doubt of it, if the words had been *ſi*, if Sir *Thomas* ſhall within ſix months of ſuch declaration convey; but that it muſt have been intended precedent; yet if you mark it well, theſe words *ita quod* and *ſi*, howſoever in propriety, the *ita quod* may ſeem ſubſequent, and the *ſi* precedent, yet they both bow to the ſenſe.

So we ſee in 4 *Edw.* VI. *Colthurſt*'s caſe, a man leaſeth to *J. S.* a houſe, *ſi ipſe vellet habitare, & reſidens eſſe*; there the word *ſi* amounts to a condition ſubſequent; for he could not be reſident before he took the ſtate; 4 E. 6. Pl. Com. *Colthurſt*'s caſe.

and

and ſo *via verſa* may *ita quod* be precedent, for elſe it muſt be idle or void. But I go farther, for I ſay *ita quod*, though it be good words of condition, yet more properly it is neither condition, precedent nor ſubſequent, but rather a qualification, or form, or adherent to the acts, whereto it is joined, and made part of their eſſence, which will appear evidently by other caſes. For allow it had been thus, *ſo that the deed of declaration be inrolled* within ſix months, this is all one, as by deed inrolled within ſix months, as it is ſaid in *Digg*'s caſe 42 *Eliz.* f. 173. That by deed indented to be inrolled is all one with deed indented and inrolled. It is but a *modus faciendi*, a deſcription, and of the ſame nature is the *ita quod:* ſo if it had been thus, it ſhall be lawful for Sir *Thomas* to declare, *ſo that* the declaration be with the conſent of my lord chief juſtice, is it not all one with the more compendious form of penning, that Sir *Thomas* ſhall declare with the conſent of my lord chief juſtice? And if it had been thus, ſo that Sir *John* within ſix months after ſuch declaration ſhall obtain the conſent of my lord chief juſtice, ſhould not the uſes have expected? But theſe you will ſay are forms, and circumſtances annexed to the conveyance required; why ſurely any collateral matter coupled by the *ita quod* is as ſtrong? If the *ita quod* had been that Sir *John Stanhope* within ſix months ſhould have paid my lady 1000 *l.* or entered into bond, never more to diſturb her, or the like, all theſe make but one entire idea or notion, how that his power ſhould not be categorical, or ſimple at pleaſure, but hypothetical, and qualified, and reſtrained, that is to ſay, not the one without the other, and they are parts incorporated into the nature and eſſence of the authority itſelf.

Digg's caſe, 42 Eliz. Co. p. 1. f. 173.

THE third reaſon is the juſtice of the law in taking words ſo, as no material part of the parties intent periſh: for as one ſaith *præſtat torquere verba quam homines*, better wreſt words out of place, than my Lady *Stanhope* out of her jointure, that was meant to her. And therefore it is elegantly ſaid in *Fitz-William*'s caſe, which I vouched before, though words be contradictory, and (to uſe the phraſe of the book) *pugnant tanquam ex diametro*; yet the law delighteth to make atonement, as well between words, as between parties, and will reconcile them, ſo as they may ſtand, and abhorreth a *vacuum*, as well as nature abhorreth it; and as nature to avoid a *vacuum* will draw ſubſtances contrary to their propriety, ſo will the law draw words. Therefore ſaith *Littleton*, if I make a feoffment *reddendo* rent to a ſtranger, this is a condition to the feoffor, rather than it ſhall be void, which is quite croſs; it founds a rent, it works a condition, it is limited to a third perſon, it inureth to the feoffor; and yet the law favoureth not conditions, but to avoid a *vacuum*.

45 E. 3. So in the caſe of 45 *E.* III. a man gives land in frank-marriage, the remainder in fee. The frank-marriage is firſt put, and that can be but by tenure of the donor; yet rather than the remainder ſhould be void, though it be laſt placed, the frank-marriage being but a privilege of eſtate ſhall be deſtroyed.

So 33 *H.* VI. *Treſſham*'s caſe: the King granteth a wardſhip, before it fall; good, becauſe it cannot inure by covenant, and if it ſhould not be good by plea, as the book terms it, it were void: ſo that, no, not in the King's caſe, the law will not admit words to be void.

So then the intent appears moſt plainly, that this act of Sir *John* ſhould be *actus geminus*, a kind of twine to take back, and to give back, and to make an exchange, and not a reſumption; and therefore upon a conceit of repugnancy, to take the one part, which is the privation of my lady's jointure, and not the other, which is the reſtitution or compenſation, were a thing utterly injurious in matter, and abſurd in conſtruction.

THE

THE fourth reaſon is out of the nature of the conveyance, which is by way of uſe, and therefore ought to be conſtrued more favourably according to the intent, and not literally or ſtrictly: for although it be ſaid in *Frene* and *Dillon*'s caſe, and in *Fitz-Williams*'s caſe, that it is ſafe ſo to conſtrue the ſtatute of 27 *H.* VIII. as that uſes may be made ſubject to the rules of the common law, which the profeſſors of the law do know, and not leave them to be extravagant and irregular; yet if the late authorities be well marked, and the reaſon of them, you ſhall find this difference, that uſes in point of operation are reduced to a kind of conformity with the rules of the common law, but that in point of expoſition of words, they retain ſomewhat of their antient nature, and are expounded more liberally according to the intent; for with that part the ſtatute of 27, doth not meddle. And therefore if the queſtion be, whether a bargain and ſale upon condition be good to reduce the ſtate back without an entry; or whether if a man make a feoffment in fee to the uſe of *John a Style* for years, the remainder to the right heirs of *John a Downe*, this remainder be good or no, theſe caſes will follow the grounds of the common law for poſſeſſions, in point of operation; but ſo will it not be in point of expoſition.

FOR if I have the manor of *Dale*, and the manor of *Sale* lying both in *Vale*, and I make a leaſe for life of them both, the remainder of the manor of *Dale*, and all other my lands in *Vale* to *John a Style*, the remainder of the manor of *Sale* to *John a Downe*, this latter remainder is void, becauſe it comes too late, the general words having carried it before to *John a Style*. But put it by way of uſe, a man makes a feoffment in fee of both manors, and limits the uſe of the manor of *Dale*, and all other the lands in *Vale*, to the uſe of himſelf, and his wife for her jointure, and of the manor of *Sale* to the uſe of himſelf alone. Now his wife ſhall have no jointure in the manor of *Sale*, and ſo was it judged in the caſe of the manor of *Odiam*. The caſe of the manor of *Odiam*.

AND therefore our caſe is more ſtrong, being by way of uſe, and you may well conſtrue the latter part to controul and qualify the firſt, and to make it attend and expect; nay, it is not amiſs to ſee the caſe of *Peryman* 41 *Eliz. Coke* p. 5. f. 84. where by a cuſtom a livery may expect; for the caſe was, that in the manor of *Portcheſter*, the cuſtom was, that a feoffment of land ſhould not be good, except it were preſented within a year in the court of the manor, and there ruled that it was but *actus inchoatus*, till it was preſented; now if it be not merely againſt reaſon of law, that ſo ſolemn a conveyance as livery, which keeps ſtate, (I tell you) and will not wait, ſhould expect a farther perfection, *a fortiori* may a conveyance in uſe, or declaration of uſe, receive a conſummation by degrees, and ſeveral acts. And thus much for the main point. 41 *Eliz. Co.* p. 5. f. 84.

NOW for the objection of the word *immediate*, it is but light, and a kind of ſophiſtry. They ſay that the words are, that the uſes ſhall riſe immediately after the declaration, and we would have an interpoſition of an act between, *viz.* that there ſhould be a declaration firſt, then a new aſſurance within the ſix months; and laſtly, the uſes to riſe; whereunto the anſwer is eaſy; for we have ſhewed before, that the declaration and the new aſſurance are in the intent of him that made the conveyance, and likewiſe in eye of law, but as one compounded act. So as *immediately after the declaration* muſt be underſtood of a perfect and effectual declaration, with the adjuncts and accouplements expreſſed.

SO we ſee in 49 *E.* III. f. 11. If a man be attainted of felony, that holds lands of a common perſon, the King ſhall have his year, day and waſte: 48 E. 3. f. 11.

but when? not before an office found: and yet the words of the ſtatute of *praerogativa Regis* are *Rex habebit catalla ſelonum, & ſi ipſi habent liberum tenementum, ſtatim capiatur in manus domini, & rex habebit annum, diem & vaſtum:* and here the word *ſtatim* is underſtood of the effectual and lawful time, that is after office found.

2 H. 4. f. 17. So in 2 *H.* IV. f. 17. it appears that by the ſtatute of *Acton Burnell*, if the debt be acknowledged, and the day paſt, that the goods of the debtors ſhall be ſold *ſtatim*, in *French maintenant*; yet nevertheleſs this *ſtatim* ſhall not be underſtood, before the proceſs of law requiſite paſſed, that is, the day compriſed in the extent.

27 H. 8. f. 19. So it is ſaid 27 *H.* VIII. f. 19. by *Audley* the Chancellor, that the preſent tenſe ſhall be taken for the future, *a fortiori* ſay I, the immediate future tenſe may be taken for a diſtant future tenſe: as if I be bound that my ſon being of the age of twenty one years ſhall marry your daughter, and that he be now of twelve years; yet this ſhall be underſtood, when he ſhall be of the age of twenty one years. And ſo in our caſe *immediately after the declaration* is intended, when all things ſhall be performed, that are coupled with the ſaid *declaration*.

But in this I doubt I labour too much; for no man will be of opinion, that it was intended that the Lady *Stanhope* ſhould be ſix whole months without either the old jointure or the new; but that the old ſhould expect until the new were ſettled without any *interim*. And ſo I conclude this courſe of atonements (as *Fitz-Williams*'s caſe calls it) whereby I have proved, that all the words by a true marſhalling of the acts may ſtand according to the intent of the parties.

I May add *tanquam ex abundanti*, that if both clauſes do not live together, they muſt both die together; for the law loves neither fractions of eſtates, nor fractions of conſtructions: and therefore in *Jermin* and *Askew*'s caſe, 37 *Eliz.* a man did deviſe lands in tail with proviſo, that if the deviſee did attempt to alien, his eſtate ſhould ceaſe, as if he were naturally dead. Is it ſaid there, that the words, *as if he were naturally dead*, ſhall be void, and the words, *that his eſtate ſhall ceaſe*, good? No, but the whole clauſe ſhall be void. And it is all one reaſon of a *ſo that*, as of an *as if*, for they both ſuſpend the ſentence.

Jermin and *Askew*'s caſe.

So if I make a leaſe for life, upon condition he ſhall not alien, nor take the profits, ſhall this be good for the firſt part, and void for the ſecond? No, but it ſhall be void for both.

So if the power of declaration of uſes had been thus penn'd, that Sir *John Stanhope* might by his deed indented declare new uſes, ſo that the deed were inrolled before the mayor of *St. Albans*, who hath no power to take inrollments; or ſo that the deed were made in ſuch ſort, as might not be made void by parliament: in all theſe and the like caſes the impoſſibility of the laſt part doth ſtrike upwards and infect, and deſtroy the whole clauſe. And therefore, that all the words may ſtand, is the firſt and true courſe; that all the words be void, is the ſecond and probable; but that the revoking part ſhould be good, and the aſſuring part void, hath neither truth nor probability.

Now come I to the ſecond point, how this value ſhould be meaſured, wherein methinks you are as ill a meaſurer of values, as you are an expounder of words; which point I will divide, firſt conſidering what the law doth generally intend by the word *value*; and ſecondly to ſee what ſpecial words may be in theſe clauſes, either to draw it to a value of a preſent arrentation, or to underſtand it of a juſt and true value.

The

THE word value is a word well known to the law, and therefore cannot be (except it be willingly) misunderstood. By the common law there is upon a warranty a recovery in value. I put the case therefore that I make a feoffment in fee with warranty of the manor of *Dale*, being worth 20 *l. per annum*, and then in lease for 20 *s.* The lease expires; (for that is our case, though I hold it not needful) the question is, whether upon an eviction there shall not be recovered from me land to the value of 20 *l.*

So if a man give land in frank-marriage then rented at 40 *l.* and no more worth; there descendeth other lands, let perhaps for a year or two for 20 *l.* but worth 80 *l.* shall not the donee be at liberty to put this land in hotchpotch?

So if two parceners be in tail, and they make partition of lands equal in rent, but far unequal in value, shall this bind their issues? By no means; for there is no calendar so false to judge of values as the rent, being sometimes improved, sometimes antient, sometimes where great fines have been taken, sometimes where no fines; so as in point of recompense you were as good put false weights into the hands of the law, as to bring in this interpretation of value by a present arrentation. But this is not worth the speaking to in general; that which giveth colour, is the special words in the clause of revocation, that the 20 *l.* value should be according to the rents then answered; and therefore that there should be a correspondence in the computation likewise of the recompense. But this is so far from countenancing that exposition, as, well noted, it crosseth it; for *opposita juxta se posita magis eluceſcunt:* first, it may be the intent of Sir *Thomas*, in the first clause, was double, partly to exclude any land in demesne, partly knowing the land was double, and as some say quadruple, better than the rent, he would have the more scope of revocation under his 20 *l.* value.

BUT what is this to the clause of recompense? first, are there any words *secundum computationem praedictam?* There are none. Secondly, doth the clause rest upon the words *similis valoris?* No, but joineth *tantum & similis valoris:* confound not predicaments; for they are the mere-stones of reason. Here is both quantity and quality; nay he saith farther within the same towns: Why? marry it is somewhat to have men's possessions lie about them, and not dispersed. So it must be as much, as good, as near; so plainly doth the intent appear, that my lady should not be a loser.

For the point of the notice, it was discharged by the court.

THE

THE JURISDICTION OF THE MARCHES.

The effect of the first argument of the King's Sollicitor-general, in maintaining the jurisdiction of the Council of the marches over the four shires.

THE question for the present is only upon the statute of 34 *H.* VIII. and though it be a great question, yet it is contracted into small room; for it is but a true construction of a monosyllable, the word *march*.

THE exposition of all words resteth upon three proofs, the propriety of the word, and the matter precedent and subsequent.

MATTER precedent concerning the intent of those that speak the words, and matter subsequent touching the conceit and understanding of those that construe and receive them.

FIRST therefore as to *vis termini*, the force and propriety of the word; this word *marches* signifieth no more but limits, or confines, or borders, in latin *limites*, or *confinia*, or *contermina*; and thereof was derived at the first *marchio*, a marquess, which was *comes limitaneus*.

NOW these limits cannot be *linea imaginaria*, but it must have some contents and dimension, and that can be no other but the counties adjacent: and for this construction we need not wander out of our own state, for we see the counties of *Northumberland*, *Cumberland*, and *Westmoreland*, lately the borders upon *Scotland*. Now the middle shires were commonly called the east, west, and middle marches.

TO proceed therefore to the intention of those that made the statute, in the use of this word; I shall prove that the parliament took it in this sense by three several arguments.

THE first is, that otherwise the word should be idle; and it is a rule *verba sunt accipienda, ut sortiantur effectum:* for this word *marches*, as is confessed on the other side, must be either for the counties marches, which is our sense, or the lordships marchers, which is theirs; that is, such lordships, as by reason of the incursions and infestations of the *Welsh* in antient time, were not under the constant possession of either dominion, but like the bateable ground where the war played. Now if this latter sense be destroyed, then all equivocation ceaseth.

THAT it is destroyed, appears manifestly by the statute of 27 *H.* VIII. made seven years before the statute of which we dispute; for by that statute all the lordships marchers are made shire ground, being either annexed to the antient counties of *Wales*, or to the antient counties of *England*, or

erected into new counties, and made parcel of the dominion of *Wales*, and ſo no more marches after the ſtatute of 27; ſo as there were no marches in that ſenſe at the time of the making of the ſtatute of 34.

THE ſecond argument is from the comparing of the place of the ſtatute, whereupon our doubt riſeth (*viz.*) that there ſhall be and remain a lord preſident and council in the dominion of *Wales*, and the marches of the ſame, *&c.* with another place of the ſame ſtatute, where the word (marches) is left out; for the rule is, *oppoſita juxta ſe poſita magis eluceſcunt*. There is a clauſe in the ſtatute, which gives power and authority to the King to make and alter laws for the weal of his ſubjects of his dominion of *Wales*; there the word *marches* is omitted, becauſe it was not thought reaſonable to inveſt the King with a power to alter the laws, which is the ſubjects birthright, in any part of the realm of *England*; and therefore by the omiſſion of the word *marches* in that place you may manifeſtly collect the ſignification of the word in the other, that is, to be meant of the four counties of *England*.

THE third argument which we will uſe is this: the council of the marches was not erected by the act of parliament, but confirmed; for there was a preſident and council long before in *E.* IV. his time, by matter yet appearing; and it is evident upon the ſtatute it ſelf, that in the very clauſe which we now handle, it referreth twice to the uſage, *as heretofore hath been uſed*.

THIS then I infer, that whatſoever was the King's intention in the firſt erection of this court, was likewiſe the intention of the parliament in the eſtabliſhing thereof, becauſe the parliament builded but upon an old foundation.

THE King's intention appeareth to have had three branches, whereof every of them doth manifeſtly comprehend the four ſhires.

THE firſt was the better to bridle the ſubject of *Wales*, which at that time was not reclaimed: and therefore it was neceſſary for the preſident and council there to have juriſdiction and command over the *Engliſh* ſhires; becauſe that by the aid of them, which were undoubted good ſubjects, they might the better govern and ſuppreſs thoſe that were doubtful ſubjects.

AND if it be ſaid, that it is true, that the four ſhires were comprehended in the commiſſion of *oyer* and *terminer*, for the ſuppreſſing of riots and miſdemeanors, but not for the juriſdiction of a court of equity; to that I anſwer, that their commiſſion of *oyer* and *terminer* was but *gladius in vagina*, for it was not put in practice amongſt them; for even in puniſhment of riots and miſdemeanors, they proceeded not by their commiſſion of *oyer* and *terminer* by way of jury, but as a council by way of examination. And again it was neceſſary to ſtrengthen that court for their better countenance with both *juriſdictions*, as well civil as criminal, for *gladius gladium juvat*.

THE ſecond branch of the King's intention was to make a better equality of commerce, and intercourſe in contracts and dealings between the ſubjects of *Wales* and the ſubjects of *England*; and this of neceſſity muſt comprehend the four ſhires: for otherwiſe, if the ſubject of *England* had been wronged by the *Welſh* on the ſides of *Wales*, he might take his remedy nearer hand. But if the ſubject of *Wales*, for whoſe weal and benefit the ſtatute was chiefly made, had been wronged by the *Engliſh* in any of the ſhires, he might have ſought his remedy at *Weſtminſter*.

THE third branch of the King's intent was to make a convenient dignity and ſtate for the manſion and reſiance of his eldeſt ſon, when he ſhould

be created Prince of *Wales*, which likewiſe muſt plainly include the four ſhires: for otherwiſe to have ſent *primogenitum Regis* to a government, which without the mixture of the four ſhires (as things then were) had more peril than honour or command; or to have granted him only a power of lieutenancy in thoſe ſhires, where he was to keep his ſtate, not adorn'd with ſome authority civil, had not been convenient.

So that here I conclude the ſecond part of that I am to ſay touching the intention of the parliament precedent.

Now touching the conſtruction ſubſequent, the rule is good, *optimus legum interpres conſuetudo*; for our labour is not to maintain an uſage againſt a ſtatute, but by an uſage to expound a ſtatute; for no man will ſay, but the word *marches* will bear the ſenſe, that we give it.

This uſage or cuſtom is fortified by four notable circumſtances; firſt that it is antient and not late, or recent; ſecondly, it is authorized and not popular, or vulgar; thirdly, that it hath been admitted and quiet, and not litigious or interrupted; and fourthly, when it was brought in queſtion, which was but once, it hath been affirmed *judicio controverſo*.

For the firſt, there is record of a preſident and council, that hath exerciſed and practiſed juriſdiction in theſe ſhires, as well ſixty years before the ſtatute, *viz.* ſince 18 *E.* IV. as the like number of years ſince: ſo that it is *Janus bifrons*, it hath a face backwards from the ſtatute, as well as forwards.

For the ſecond it hath received theſe allowances by the practice of that court, by ſuits originally commenced there, by remanding from the courts of *Weſtminſter*, when cauſes within thoſe ſhires have been commenced here above; ſometimes in chancery, ſometimes in the ſtar-chamber, by the admittance of diverſe great learned men, and great judges, that have been of that council, and exerciſed that juriſdiction; as at one time *Bromley*, *Morgan*, and *Brook*, being the two chief juſtices, and chief baron, and diverſe others; by the King's learned council, which always were called to the penning of the King's inſtructions; and laſtly, by the King's inſtructions themſelves, which though they be not always extant, yet it is manifeſt that ſince 17 *H.* VIII. when Princeſs *Mary* went down, that the four ſhires were ever comprehended in the inſtructions, either by name, or by that that amounts to ſo much. So as it appears that this uſage or practice hath not been an obſcure cuſtom practiſed by the multitude, which is many times erroneous, but authorized by the judgment and conſent of the ſtate: for as it is *vera vox* to ſay, *maximus erroris populus magiſter*; ſo it is *dura vox* to ſay, *maximus erroris princeps magiſter*.

For the third, it was never brought in queſtion till 16 *Eliz.* in the caſe of one *Wynde*.

And for the fourth, the controverſy being moved in that caſe, it was referred to *Gerrard* attorney, and *Bromley* ſollicitor, which was afterwards chancellor of *England*, and had his whole ſtate of living in *Shropſhire* and *Worceſter*, and by them reported to the lords of the council in the ſtar-chamber, and upon their report decreed, and the juriſdiction affirmed.

Lastly, I will conclude with two manifeſt badges and tokens, though but external yet violent in demonſtration, that theſe four ſhires were underſtood by the word *marches*; the one the denomination of that council, which was ever in common appellation termed and ſtyled *the council of* the *marches*, or in the *marches*, rather than the council of *Wales*, or in *Wales*, and *denominatio eſt a digniore*. If it had been intended of lordſhips marchers, it had been, as if one ſhould have called my lord mayor, my lord

mayor

mayor of the ſuburbs. But it was plainy intended of the four *Engliſh* ſhires, which indeed were the more worthy.

And the other is of the perpetual reſiance and manſion of the council, which was evermore in the ſhires; and to imagine that a court ſhould not have juriſdiction, where it ſitteth, is a thing utterly improbable, for they ſhould be *tanquam piſcis in arido.*

So as upon the whole matter, I conclude that the word (marches) in that place by the natural ſenſe, and true intent of the ſtatute, is meant of the four ſhires.

The effect of that, that was ſpoken by Serjeant Hutton *and Serjeant* Harris, *in anſwer of the former argument, and for the excluding of the juriſdiction of the marches in the four ſhires.*

THAT, which they both did deliver, was reduced to three heads:

The firſt, to prove the uſe of the word *marches* for lordſhips marchers.

The ſecond to prove the continuance of that uſe of the word, after the ſtatute of 27, that made the lordſhips marchers ſhire-grounds; whereupon it was inferred, that though the marches were deſtroyed in nature, yet they remained in name.

The third was ſome collections, they made upon the ſtatute of 34; whereby they inferred, that that ſtatute intended that word in that ſignification.

For the firſt, they did alledge diverſe ſtatutes before 27 *H.* VIII. and diverſe book-caſes of law in print, and diverſe offices and records, wherein the word *marches* of *Wales* was underſtood of the lordſhips marchers.

They ſaid farther, and concluded, that whereas we ſhew our ſenſe of the word but rare, they ſhew theirs common and frequent; and whereas we ſhew it but in a vulgar uſe and acceptation, they ſhew theirs in a legal uſe in ſtatutes, authorities of books, and antient records.

They ſaid farther, that the example we brought of marches upon *Scotland*, was not like, but rather contrary; for they were never call'd *marches* of *Scotland*, but the *marches* of *England:* whereas the ſtatute of 34, doth not ſpeak of the *marches* of *England*, but of the *marches* of *Wales.*

They ſaid farther, that the county of *Worceſter* did in no place or point touch upon *Wales*, and therefore that county could not be termed *marches.*

To the ſecond they produced three proofs; firſt, ſome words in the ſtatute of 32 *H.* VIII. where the ſtatute providing for a form of trial for treaſon committed in *Wales*, and the marches thereof, doth uſe that word, which was in time after the ſtatute of 27, whereby they prove the uſe of the word continued.

The ſecond proof was out of two places of the ſtatute, whereupon we diſpute, where the word *marches* is uſed for the lordſhips marchers.

The third proof was the ſtyle and form of the commiſſion of *oyer* and *terminer* even to this day, which run to give power and authority to the preſident and council there, *infra principalitat. Walliae*, and *infra* the four counties by name; with this clauſe farther, & *marchias Walliae eiſdem comitatibus adjacent':* whereby they infer two things ſtrongly, the one that the marches of *Wales* muſt needs be a diſtinct thing from the four counties; the other

other that the word *marches* was uſed for the lordſhips marchers long after both ſtatutes.

They ſaid farther, that otherwiſe the proceeding, which had been in the four new erected counties of *Wales* by the commiſſion of *oyer* and *terminer*, by force whereof many had been proceeded with both for life, and otherways, ſhould be called in queſtion, as *coram non judice*, inſomuch as they neither were part of the principality of *Wales*, nor part of the four ſhires; and therefore muſt be contained by the word *marches*, or not at all.

For the third head, they did inſiſt upon the ſtatute of 34, and upon the preamble of the ſame ſtatute.

The title being an act for certain ordinances in the King's Majeſty's dominion and principality of *Wales*; and the preamble being for the tender zeal and affection that the King bears to his ſubjects of *Wales*; and again, at the humble ſuit and petition of his ſubjects of *Wales*: whereby they infer that the ſtatute had no purpoſe to extend or intermeddle with any part of the King's dominions or ſubjects, but only within *Wales*.

And for uſage and practice they ſaid, it was nothing againſt an act of parliament.

And for the inſtructions, they preſſed to ſee the inſtructions immediately after the ſtatute made.

And for the certificate and opinions of *Gerrard* and *Bromley*, they ſaid they doubted not, but that if it were now referred to the attorney and ſollicitor, they would certify as they did.

And laſtly, they relied, as upon their principal ſtrength, upon the precedent of that, which was done of the exempting of *Cheſhire* from the late juriſdiction of the ſaid council; for they ſaid, that from 34 of *H.* VIII. until 11 of Queen *Eliz.* the court of the marches did uſurp juriſdiction upon that county, being likewiſe adjacent to *Wales*, as the other four are; but that in the eleventh year of Queen *Elizabeth* aforeſaid, the ſame being queſtioned at the ſuit of one *Radforde*, was referred to the Lord *Dyer*, and three other judges, who by their certificate at large remaining of record in the chancery, did pronounce the ſaid ſhire to be exempted, and that in the concluſion of their certificate they give this reaſon, becauſe it was no part of the principality, or marches of *Wales*. By which reaſon they ſay it ſhould appear their opinion was, that the word *marches* could not extend to counties adjacent. This was the ſubſtance of their defence.

The reply of the King's Sollicitor to the arguments of the two ſerjeants.

Having divided the ſubſtance of their arguments (*ut ſupra*) he did purſue the ſame diviſion in his reply, obſerving nevertheleſs both a great redundancy, and a great defect in that, which was ſpoken. For touching the uſe of the word *marches* great labour had been taken, which was not denied: but touching the intent of the parliament, and the reaſons to demonſtrate the ſame, which were the life of the queſtion, little or nothing had been ſpoken.

And therefore as to the firſt head, that the word *marches* had been often applied to the lordſhips marchers, he ſaid it was the ſophiſm, which is called *ſciomachia*, fighting with their ſhadows, and that the ſound of ſo many ſtatutes, ſo many printed book-caſes, ſo many records were *nomina magna*, but

but they did not preſs the queſtion; for we grant that the word *marches* hath ſignifications, ſometimes for the counties, ſometimes for the lordſhips marchers, like as *Northampton*, and *Warwick* is ſometimes taken for the towns of *Northampton* and *Warwick*, and ſometimes for the counties of *Northampton* and *Warwick*. And *Dale* and *Sale* are ſometimes taken for the villages or hamlets of *Dale* and *Sale*, and ſometimes taken for the pariſhes of *Dale* and *Sale*: and therefore that the moſt part of that they had ſaid, went not to the point.

To that anſwer, which was given to the example of the middle ſhires upon *Scotland*, it was ſaid, it was not *ad idem*; for we uſed it to prove that the word *marches* may and doth refer to whole counties; and ſo much it doth manifeſtly prove; neither can they deny it. But then they pinch upon the addition, becauſe the *Engliſh* counties adjacent upon *Scotland* are called the marches of *England*, and the *Engliſh* counties adjacent upon *Wales* are called the marches of *Wales*; which is but a difference in phraſe: for ſometimes limits and borders have their names of the inward country, and ſometimes of the outward country; for the diſtinction of *excluſivè* and *incluſivè* is a diſtinction both in time and place; as we ſee that that which we call this day fortnight, excluding the day, the *French* and the law-phraſe calls this day fifteen days, or *quindena* including the day. And if they had been called the marches upon *Wales*, or the marches againſt *Wales*, then it had been clear and plain; and what difference between the banks of the ſea, and the banks againſt the ſea? So that he took this to be but a toy, or cavillation, for that phraſes of ſpeech are *ad placitum*, *& recipiunt caſum*.

As to the reaſon of the map, that the county of *Worceſter* doth no way touch upon *Wales*, it is true, and I do find when the lordſhips marchers were annexed, ſome were laid to every other of the three ſhires, but none to *Worceſter*. And no doubt but this emboldened *Wynd* to make the claim to *Worceſter*, which he durſt not have thought on for any of the other three. But it falls out well that that, which is the weakeſt in probability, is ſtrongeſt in proof; for there is a caſe ruled in that more than in the reſt. But the true reaſon is, that uſage muſt over-rule propriety of ſpeech; and therefore if all commiſſions and inſtructions, and practices, have coupled theſe four ſhires, it is not the map that will ſever them.

To the ſecond head he gave this anſwer. Firſt, he obſerved in general that they had not ſhewed one ſtatute, or one book-caſe, or one record (the commiſſions of *oyer* and *terminer* only excepted) wherein the word *marches* was uſed for lordſhips marchers ſince the ſtatute of 34. So that it is evident, that as they granted the nature of thoſe marches was deſtroyed and extinct by 27; ſo the name was diſcontinued ſoon after, and did but remain a very ſmall while, like the ſound of a bell, after it hath been rung and as indeed it is uſual when names are altered, that the old name, which is expired, will continue for a ſmall time.

Secondly, he ſaid, that whereas they had made the compariſon, that our acceptation of the word was popular, and theirs was legal, becauſe it was extant in book-caſes, and ſtatutes, and records, they muſt needs confeſs that they are beaten from that hold: for the name ceaſed to be legal clearly by the law of 27, which made the alteration in the thing itſelf, whereof the name is but a ſhadow; and if the name did remain afterwards, then it was neither legal, nor ſo much as vulgar, but it was only by abuſe, and by a trope or *catachreſis*.

THIRDLY, he ſhewed the impoſſibility how that ſignification ſhould continue, and be intended by the ſtatute of 34. For if it did, it muſt be in one of theſe two ſenſes, either that it was meant of the lordſhips marchers made part of *Wales*, or of the lordſhips marchers annexed to the four ſhires of *England*.

FOR the firſt of theſe, it is plainly impugned by the ſtatute itſelf: for the firſt clauſe of the ſtatute doth ſet forth that the principality and dominion of *Wales* ſhall conſiſt of twelve ſhires; wherein the four new erected counties, which were formerly lordſhips marchers, and whatſoever elſe was lordſhips marchers annexed to the antient counties of *Wales* is comprehended; ſo that of neceſſity all that territory or border muſt be *Wales*: then followeth the clauſe *immediately*, whereupon we now differ (*viz.*) that there ſhall be and remain a preſident and council in the principality of *Wales*, and the marches of the ſame; ſo that the parliament could not forget ſo ſoon what they had ſaid in the clauſe next before: and therefore by the marches they meant ſomewhat elſe beſides that which was *Wales*. Then if they fly to the ſecond ſignification, and ſay that it was meant by the lordſhips marchers annexed to the four *Engliſh* ſhires; that device is merely *nuper nata oratio*, a mere fiction and invention of wit, croſſed by the whole ſtream and current of practice: for if that were ſo, the juriſdiction of the council ſhould be over part of thoſe ſhires, and in part not; and then in the ſuits commenced againſt any of the inhabitants of the four ſhires, it ought to have been laid or ſhew'd that they dwelt within the antient lordſhips marchers, whereof there is no ſhadow that can be ſhewed.

THEN he proceeded to the three particulars. And for the ſtatute of 32, for trial of treaſon, he ſaid it was neceſſary that the word *marches* ſhould be added to *Wales*, for which he gave this reaſon, that the ſtatute did not only extend to the trial of treaſons, which ſhould be committed after the ſtatute, but did alſo look back to treaſons committed before: and therefore this ſtatute being made but five years after the ſtatute of 27, that extinguiſhed the lordſhips marchers, and looking back, as was ſaid, was fit to be penn'd with words, that might include the preterperfect tenſe, as well as the preſent tenſe; for if it had reſted only upon the word *Wales*, then a treaſon committed before the lordſhips marchers were made part of *Wales*, might have eſcaped the law.

TO this alſo another anſwer was given, which was, that the word *marches* as uſed in that ſtatute, could not be referred to the four ſhires, becauſe of the words following, wherewith it is coupled (*viz.*) in *Wales*, and the marches of the ſame, where the King's writ runs not.

TO the two places of the ſtatute of 34 itſelf, wherein the word *marches* is uſed for lordſhips marchers; if they be diligently marked, it is merely ſophiſtry to alledge them; for both of them do ſpeak by way of recital of the time paſt before the ſtatute of 27, as the words themſelves being read over will ſhew without any other enforcement; ſo that this is ſtill to uſe the almanack of the old year with the new.

TO the commiſſions of *oyer* and *terminer*, which ſeemeth to be the beſt evidence they ſhew for the continuance of the name in that *tropical* or abuſed ſenſe, it might move ſomewhat, if this form of penning thoſe commiſſions had been begun ſince the ſtatute of 27. But we ſhew forth the commiſſion in 17 *H.* VIII. when the Princeſs *Mary* went down, running in the ſame manner *verbatim*, and in that time it was proper, and could not otherwiſe be. So that it appeareth that it was but merely a *fac ſimile*, and that

that notwithſtanding the caſe was altered, yet the clerk of the crown purſued the former precedent; hurt it did none, for the word *marches* is there ſuperfluous.

And whereas it was ſaid, that the words in thoſe commiſſions were effectual, becauſe elſe the proceeding in the four new-erected ſhires of *Wales* ſhould be *coram non judice*, that objection carrieth no colour at all; for it is plain, they have authority by the word *Principality of Wales* without adding the word *marches*; and that is proved by a number of places in the ſtatute of 34, where if the word *Wales* ſhould not comprehend thoſe ſhires, they ſhould be excluded in effect of the whole benefit of that ſtatute; for the word *marches* is never added in any of theſe places.

To the third head, touching the true intent of the ſtatute, he firſt noted how naked their proof was in that kind, which was the life of the queſtion, for all the reſt was but *in litera, & in cortice.*

He obſerved alſo that all the ſtrength of our proof, that concerned that point, they had paſſed over in ſilence, as belike not able to anſwer: for they had ſaid nothing to the firſt intentions of the erections of the court, whereupon the parliament built; nothing to the diverſity of penning, which was obſerved in the ſtatute of 34, leaving out the word *marches*, and reſting upon the word *Wales* alone; nothing to the reſiance, nothing to the denomination, nothing to the continual practice before the ſtatute and after, nothing to the King's inſtructions, *&c.*

As for that that they gather out of the title and preamble, that the ſtatute was made for *Wales*, and for the weal and government of *Wales*, and at the petition of the ſubjects of *Wales*, it was little to the purpoſe; for no man will affirm on our part the four *Engliſh* ſhires were brought under the juriſdiction of that council, either firſt by the King, or after by the parliament for their own ſakes, being in parts no farther remote; but it was for congruity's ſake, and for the good of *Wales*, that that commixture was requiſite: and *turpis eſt pars, quae non congruit cum toto.* And therefore there was no reaſon, that the ſtatute ſhould be made at their petition, conſidering they were not *primi in intentione*, but came *ex conſequenti.*

And whereas they ſay that uſage is nothing againſt an act of parliament, it ſeems they do voluntarily miſtake, when they cannot anſwer; for we do not bring uſage to croſs an act of parliament, where it is clear, but to expound an act of parliament, where it is doubtful, and evermore *contemporanea interpretatio*, whether it be of ſtatute or Scripture, or author whatſoever, is of greateſt credit: for to come now above ſixty years after by ſubtilty of wit to expound a ſtatute otherwiſe than the ages immediately ſucceeding did conceive it, is *expoſitio contentioſa*, and not *naturalis.* And whereas they extenuate the opinion of the attorney and ſollicitor, it is not ſo eaſy to do; for firſt they were famous men, and one of them had his patrimony in the ſhires; ſecondly, it was of ſuch weight, as a decree of the council was grounded upon it; and thirdly, it was not unlike, but that they had conferred with the judges, as the attorney and ſollicitor do often uſe in like caſes.

Lastly, for the exemption of *Cheſhire* he gave this anſwer. Firſt, that the certificate in the whole body of it, till within three or four of the laſt lines, doth rely wholly upon that reaſon, becauſe it was a county *Palatine*, and to ſpeak truth, it ſtood not with any great ſenſe or proportion, that that place, which was privileged and exempted from the juriſdiction of the courts

courts of *Weſtminſter*, ſhould be meant by the parliament to be ſubjected to the juriſdiction of that council.

SECONDLY, he ſaid that thoſe reaſons, which we do much inſiſt upon for the four ſhires, hold not for *Cheſhire*; for we ſay it is fit the ſubject of *Wales* be not forced to ſue at *Weſtminſter*, but have his juſtice near hand; ſo may he have in *Cheſhire*, becauſe there is both a juſtice for common law and a chancery; we ſay it is convenient for the Prince, if it pleaſe the King to ſend him down, to have ſome juriſdiction civil as well as for the peace; ſo may he have in *Cheſhire*, as Earl of *Cheſter*. And therefore thoſe grave men had great reaſon to conceive that the parliament did not intend to include *Cheſhire*.

AND whereas they pinch upon the laſt words in the certificate, *viz.* that *Cheſhire* was no part of the dominion, nor of the marches, they muſt ſupply it with this ſenſe, not within the meaning of the ſtatute; for otherwiſe the judges could not have diſcerned of it: for they were not to try the fact, but to expound the ſtatute; and that they did upon thoſe reaſons, which were ſpecial to *Cheſhire*, and have no affinity with the four ſhires.

AND therefore if it be well weighed, that certificate makes againſt them; for as *exceptio firmat legem in caſibus non exceptis*, ſo the excepting of that ſhire by it ſelf doth fortify, that the reſt of the ſhires were included in the very point of difference.

AFTER this he ſhewed a ſtatute in 18 *Eliz.* by which proviſion is made for the repair of a bridge called *Chepſtow-bridge* between *Monmouth* and *Gloceſter*, and the charge lay in part upon *Gloceſterſhire*; in which ſtatute there is a clauſe, that if the juſtices of peace do not their duty in levying of the money, they ſhall forfeit five pounds to be recovered by information before the council of the marches: whereby he inferred that the parliament would never have aſſigned the ſuit to that court, but that it conceived *Gloceſterſhire* to be within the juriſdiction thereof. And therefore he concluded that here is in the nature of a judgment by parliament, that the ſhires are within the juriſdiction.

The third and laſt argument of the King's ſollicitor in the caſe of the marches in reply to ſerjeant Harris.

THIS caſe groweth now to ſome ripeneſs, and I am glad we have put the other ſide into the right way; for in former arguments they laboured little upon the intent of the ſtatute of 34 *H.* VIII. and buſied themſelves in effect altogether about the force and uſe of the word *marches*; but now finding that *littera mortua non prodeſt*, they offer at the true ſtate of the queſtion, which is the intent; I am determined therefore to reply to them in their own order, *ut manifeſtum ſit* (as he ſaith) *me nihil aut ſubterfugere voluiſſe reticendo, aut obſcurare dicendo.*

ALL which hath been ſpoken on their part, conſiſteth upon three proofs.

THE firſt was by certain inferences to prove the intent of the ſtatute.

THE ſecond was to prove the uſe of the word *marches*, in their ſenſe long after both ſtatutes; both that of 27, which extincted the lordſhips marchers, and that of 34, whereupon our queſtion ariſeth.

THE third was to prove an interruption of that practice and uſe of juriſdiction, upon which we mainly inſiſt, as the beſt expoſition of the ſtatute.

For the firſt of theſe concerning the intention, they brought five reaſons.

The firſt was that this ſtatute of 34, was grounded upon a platform, or preparative of certain ordinances made by the King two years before, *viz.* 32; in which ordinances there is the very clauſe, whereupon we diſpute, *viz.* That there ſhould be and remain in the dominion and principality of *Wales* a preſident and a council: In which clauſe nevertheleſs the word *marches* is left out, whereby they collect that it came into the ſtatute of 34, but as a ſlip without any farther reach or meaning.

The ſecond was that the miſchief before the ſtatute, which the ſtatute means to remedy, was, that *Wales* was not governed according to ſimilitude or conformity with the laws of *England*. And therefore, that it was a croſs and perverſe conſtruction, when the ſtatute laboured to draw *Wales* to the laws of *England*, to conſtrue it that it ſhould abridge the antient ſubjects of *England* of their own laws.

The third was, that in a caſe of ſo great importance, it is not like that if the ſtatute had meant to include the four ſhires, it would have carried it in a dark general word, as it were *noctanter*, but would have named the ſhires to be comprehended.

The fourth was the more to fortify the third reaſon, they obſerved that the four ſhires are remembred and named in ſeveral places of the ſtatute, three in number; and therefore it is not like that they would have been forgotten in the principal place, if they had been meant.

The fifth and laſt was that there is no clauſe of attendance; that the ſheriffs of the four ſhires ſhould attend the lord preſident and the council, wherein there was urged the example of the acts of parliament, which erected courts; as the court of augmentations, the court of wards, the court of ſurvey, in all which there are clauſes of attendance; whereupon they inferred that evermore, where a ſtatute gives a court juriſdiction, it ſtrengtheneth it with a clauſe of attendance; and therefore no ſuch clauſe being in this ſtatute, it is like there was no juriſdiction meant. Nay, farther they noted, that in this very ſtatute for the juſtices of *Wales*, there is a clauſe of attendance from the ſheriffs of *Wales*.

In anſwer to their firſt reaſon, they do very well, in my opinion, to conſider Mr. Attorney's buſineſs and mine, and therefore to find out for us evidence and proofs, which we have no time to ſearch; for certainly nothing can make more for us than theſe ordinances, which they produce: for the diverſity of penning of that clauſe in the ordinances, where the word *marches* is omitted, and that clauſe in the ſtatute where the word *marches* is added, is a clear and perfect direction what was meant by that word. The ordinances were made by force, and in purſuance of authority given to the King by the ſtatute of 27; to what did the ſtatute extend, only to *Wales?* And therefore the word *marches* in the ordinances is left out; but the ſtatute of 34 reſpected not only *Wales*, but the commixed government, and therefore the word *marches* was put in. They might have remembred that we built an argument upon the difference of penning of that ſtatute of 34 itſelf in the ſeveral clauſes of the ſame; for that in all other clauſes, which concern only *Wales*, the word *marches* is ever omitted; and in that clauſe alone, that concerneth the juriſdiction of the preſident and council, it is inſerted. And this our argument is notably fortified by that they now ſhew of the ordinances, wherein the very ſelf-ſame clauſe, touching the preſident and council, becauſe the King had no authority to meddle but with *Wales*, the

word *marches* is omitted. So that it is moſt plain that this word comes not in by chance or ſlip, but with judgment and purpoſe, as an effectual word: for as it was formerly ſaid, *oppoſita juxta ſe poſita magis eluceſcunt*; and therefore I may likewiſe urge another place in the ſtatute which is left out in the ordinance; for I find there is a clauſe that the town of *Bewdley*, which is confeſſed to be no lordſhips marcher, but to lie within the county of *Worceſter*; yet becauſe it was an exempted juriſdiction, is by the ſtatute annexed unto the body of the ſaid county. Firſt, this ſhews that the ſtatute of 34 is not confined to *Wales*, and the lordſhips marchers, but that it intermeddles with *Worceſterſhire*. Next, do you find any ſuch clauſe in the ordinance of 32? No: Why? Becauſe they were appropriate to *Wales*. So that in my opinion nothing could enforce our expoſition better than the collating of the ordinance of 32 with the ſtatute of 34.

In anſwer to the ſecond reaſon, the courſe, that I ſee often taken in this cauſe, makes me think of the phraſe of the Pſalm, *ſtarting aſide like a broken bow*; ſo when they find their reaſons broken, they ſtart aſide to things not in queſtion. For now they ſpeak, as if we went about to make the four ſhires *Wales*, or to take from them the benefit of the laws of *England*, or their being accounted amongſt the antient counties of *England*: doth any man ſay that thoſe ſhires are not within the circuits of *England*, but ſubject to the juſtices of *Wales*? Or that they ſhould ſend but one knight to the parliament, as the ſhires of *Wales* do? or that they may not ſue at *Weſtminſter*, in chancery, or at common law, or the like? No man affirms any ſuch things; we take nothing from them, only we give them a court of ſummary juſtice in certain cauſes at their own doors.

And this is *nova doctrina* to make ſuch an oppoſition between law and equity, and between formal juſtice and ſummary juſtice. For there is no law under heaven, which is not ſupplied with equity; for *ſummum jus*, *ſumma injuria*, or as ſome have it, *ſumma lex*, *ſumma crux*. And therefore all nations have equity; but ſome have law and equity mixed in the ſame court, which is the worſe; and ſome have it diſtinguiſhed in ſeveral courts, which is the better. Look into any counties *Palatine*, which are ſmall models of the great government of kingdoms, and you ſhall never find any, but had a chancery.

Lastly, it is ſtrange that all other places do require courts of ſummary juſtice, and eſteem them to be privileges and graces; and in this cauſe only they are thought to be ſervitudes and loſs of birth-right. The univerſities have a court of ſummary juſtice, and yet I never heard that ſcholars complain their birth-right was taken from them. The ſtannaries have them, and you have lately affirmed the juriſdiction; and yet you have taken away no man's birth-right. The court at *York*, whoſoever looks into it, was erected at the petition of the people, and yet the people did not mean to caſt away their birth-right. The court of wards is mixed with diſcretion and equity; and yet I never heard that infants and innocents were deprived of their birth-right. *London*, which is the ſeat of the kingdom, hath a court of equity, and holdeth it for a grace and favour; how then cometh this caſe to be ſingular? And therefore theſe be new phraſes and conceits proceeding of error or worſe; and it makes me think that a few do make their own deſires, the deſires of the country, and that this court is deſired by the greater number, though not by the greater ſtomachs.

In anſwer to the third reaſon, if men be converſant in the ſtatutes of this kingdom, it will appear to be no new thing to carry great matters in general words without other particular expreſſing. Conſider but of the ſtatute of 26 *H.* VIII. which hath carried eſtates tails under the general words of eſtates of inheritance. Conſider of the ſtatute of 16 *R.* II. of *praemunire*, and ſee what great matters are thought to be carried under the word *alibi*. And therefore it is an ignorant aſſertion to ſay that the ſtatute would have named the ſhires, if it had meant them.

Secondly, the ſtatute had more reaſon to paſs it over in general words, becauſe it did not ordain a new matter, but referreth to uſage: and though the ſtatute ſpeaks generally, yet uſage ſpeaks plainly and particularly, which is the ſtrongeſt kind of utterance or expreſſing. *Quid verba audiam, cum facta videam.*

And thirdly, this argument of theirs may be ſtrongly retorted againſt them: for as they infer that the ſhires were not meant, becauſe they were not included by name; ſo we infer that they are meant, becauſe they are not excepted by name, as is uſual by way of *proviſo* in like caſes: and our inference hath far greater reaſon than theirs, becauſe at the time of the making of the ſtatute they were known to be under the juriſdiction: And therefore that ought to be moſt plainly expreſſed, which ſhould work a change, and not that, which ſhould continue things, as they were.

In anſwer to their fourth reaſon, it makes likewiſe plainly againſt them; for there be three places, where the ſhires be named, the one for the extincting of the cuſtom of *Gavelkind*; the ſecond for the aboliſhing of certain forms of aſſurance which were too light to carry inheritance and freehold; the third for the reſtraining of certain franchiſes to that ſtate they were in by a former ſtatute. In theſe three places the words of the ſtatute are the lordſhips marchers annexed unto the counties of *Hereford*, *Salop*, &c.

Now mark, if the ſtatute conceived the word *marches* to ſignify lordſhips marchers, what needeth this long circumlocution? It had been eaſier to have ſaid within the *marches*. But becauſe it was conceived that the word *marches* would have comprehended the whole counties, and the ſtatute meant but of the lordſhips marchers annexed; therefore they were enforced to uſe that *periphraſis*, or length of ſpeech.

In anſwer to the fifth reaſon, I give two ſeveral anſwers; the one, that the clauſe of attendance is ſupplied by the word *incidents*; for the clauſe of eſtabliſhment of the court hath that word, *with all incidents to the ſame as heretofore hath been uſed:* for execution is ever incident to juſtice or juriſdiction. The other, becauſe it is a court, that ſtandeth not by the act of parliament alone, but by the King's inſtructions, whereto the act refers. Now no man will doubt but the King may ſupply the clauſe of attendance; for if the King grant forth a commiſſion of *oyer* and *terminer*, he may command what ſheriff he will to attend it; and therefore there is a plain diverſity between this caſe, and the caſes they vouch of the court of wards, ſurvey, and augmentations: for they were courts erected *de novo* by parliament, and had no manner of reference either to uſage or inſtructions; and therefore it was neceſſary that the whole frame of thoſe courts, and their authority both for judicature and execution, ſhould be deſcribed and expreſſed by parliament. So was it of the authority of the juſtices of *Wales* in the ſtatute of 34 mentioned, becauſe there are many ordinances *de novo* concerning them; ſo that it was a new erection, and not a confirmation of them.

THUS have I in confutation of their reaſons, greatly, as I conceive, confirmed our own, as it were with new matter; for moſt of that, they have ſaid, made for us. But as I am willing to clear your judgments in taking away the objections; ſo I muſt farther pray in aid of your memory for thoſe things, which we have ſaid; whereunto they have offered no manner of anſwer; for unto all our proofs which we made, touching the intent of the ſtatute, which they grant to be the ſpirit and life of this queſtion, they ſaid nothing: as not a word to this; That otherwiſe the word *marches* in the ſtatute ſhould be idle or ſuperfluous: not a word to this; That the ſtatute doth always omit the word *marches* in things, that concern only *Wales:* not a word to this; That the ſtatute did not mean to innovate but to ratify, and therefore if the ſhires were in before, they are in ſtill: not a word to the reaſon of the commixed government, as that it was neceſſary for the reclaiming of *Wales* to have them conjoin'd with the ſhires; that it was neceſſary for commerce and contracts, and properly for the eaſe of the ſubjects of *Wales* againſt the inhabitants of the ſhires; that it was not profitable that the parliament meant the Prince ſhould have no juriſdiction civil in that place, where he kept his houſe. To all theſe things, which we eſteem the weightieſt, there is *altum ſilentium*, after the manner of children that ſkip over, where they cannot ſpell.

NOW to paſs from the intent to the word; firſt, I will examine the proofs they have brought that the word was uſed in their ſenſe after the ſtatute 27 and 34; then I will conſider what is gained, if they ſhould prove ſo much; and laſtly, I will briefly ſtate our own proofs, touching the uſe of the word.

FOR the firſt, it hath been ſaid, that whereas I called the uſe of the word *marches* after the ſtatute of 27, but a little chime at moſt of an old word, which ſoon after vaniſhed, they will now ring us a peal of ſtatutes to prove it; but if it be a peal, I am ſure it is a peal of bells, and not a peal of ſhot: for it clatters, but it doth not ſtrike: for of all that catalogue of ſtatutes I find ſcarcely one, ſave thoſe that were anſwered in my former argument; but we may with as good reaſon affirm in every of them the word *marches* to be meant of the counties marches, as they can of the lordſhips marchers: for to begin upwards.

THE ſtatute 39 *Eliz.* for the repair of *Wilton-bridge* no doubt doth mean the word *marches* for the counties; for the bridge itſelf is in *Hereſordſhire*, and the ſtatute impoſeth the charge of reparation upon *Hereſordſhire* by compulſory means, and permitteth benevolence to be taken in *Wales*, and the marches; who doubts, but this meant of the other three ſhires, which have far greater uſe of the bridge than the remote counties of *Wales*?

FOR the ſtatute 5 *Eliz.* it concerning perjury, it hath a proviſo, that it ſhall not be prejudicial to the council of the marches for puniſhing of perjury; who can doubt, but that here marches is meant of the ſhires, conſidering the perjuries committed in them have been puniſhed in that court as well as in *Wales*?

FOR 2 *Ed.* VI. and the clauſe therein for reſtraining tithes of marriage-portions in *Wales* and the marches, why ſhould it not be meant of counties? For if any ſuch cuſtoms had crept and incroached into the body of the ſhires out of the lordſhips marchers, no doubt the ſtatute meant to reſtrain them as well there, as in the other places.

AND ſo for the ſtatute of 32 *H.* VIII. which ordains that the benefit of that ſtatute for diſtreſs to be had by *executors*, ſhould not extend to any lordſhip

ſhip in *Wales*, or the marches of the ſame where *Miſes* are paid, becauſe that imports a general releaſe; what abſurdity is there, if there the marches be meant for the whole ſhires? for if any ſuch cuſtom had ſpread ſo far, the reaſon of the ſtatute is alike.

As for the ſtatutes of 37 H. VIII. and 4 *Ed.* VI. for the making and appointing of the *cuſtos rotulorum*, there the word marches muſt needs be taken for limits, according to the *etymology* and derivation: for the words refer not to *Wales*, but are thus, *within* England *and* Wales, *and other the King's dominions*, *marches and territories*, that is *limits and territories*; ſo as I ſee no reaſon, but I may truly maintain my former aſſertion, that after the lordſhips marchers were extinct by the ſtatute of 27, the name alſo of marches was diſcontinued, and rarely if ever uſed in that ſenſe.

But if it ſhould be granted that it was now and then uſed in that ſenſe, it helps them little; for firſt it is clear that the legal uſe of it is gone, when the thing was extinct, for *nomen eſt rei nomen*; ſo it remains but *abuſivè*, as if one ſhould call *Guletta*, *Carthage*, becauſe it was once *Carthage*; and next, if the word ſhould have both ſenſes, and that we admit an equivocation, yet we ſo overweigh them upon the intent, as the balance is ſoon caſt.

Yet one thing I will note more, and that is, that there is a certain confuſion of tongues on the other ſide, and that they cannot well tell themſelves what they would have to be meant by the word *marches*; for one while they ſay it is meant for the lordſhips marchers *generally*; another while they ſay that it is meant for the inward marches on *Wales ſide only*; and now at laſt they are driven to a poor ſhift, that there ſhould be left ſome *little lordſhip marcher* in the dark, as *caſus omiſſus*, not annexed at all to any county; but if they would have the ſtatute ſatisfied upon that only, I ſay no more to them, but *aquila non capit muſcas*.

Now I will briefly remember unto you the ſtate of our proofs of the word.

First, according to the laws of ſpeech we prove it by the etymology or derivation, becauſe *march* is the *Saxon* word for limit, and *marchio* is *comes limitaneus*; this is the opinion of *Camden* and others.

Next we prove the uſe of the word in the like caſe to be for counties, by the example of the marches of *Scotland*: for as it is prettily ſaid in *Walker's caſe* by *Gawdy*, if a caſe have no couſin, it is a ſign it is a baſtard, and not legitimate; therefore we have ſhewed you a couſin, or rather a brother, here within our own iſland of the like uſe of the word. And whereas a great matter was made that the now middle ſhires were never called the marches of *Scotland*, but the marches of *England* againſt *Scotland*, or upon *Scotland*, it was firſt anſwered that that made no difference; becauſe ſometimes the *marches* take their name of the inward country, and ſometimes of the out-country; ſo that it is but *incluſivè* and *excluſivè*: as for example, that which we call in vulgar ſpeech this day *fortnight* excluding the day, that the law calls *quindena* including the day; and ſo likewiſe, who will make a difference between the banks of the ſea, and the banks againſt the ſea, or upon the ſea? But now to remove all ſcruple, we ſhew them *Littleton* in his chapter of *grand ſerjeanty*, where he ſaith, there is a tenure by *Cornage* in the *marches* of *Scotland*: and we ſhew them likewiſe the ſtatute of 25 *Edw.* III. of labourers, where they are alſo called the *marches of Scotland*.

THEN we ſhew ſome number of bills exhibited to the council there before the ſtatute, where the plaintiffs have the addition of place confeſſed within the bodies of the ſhires, and no lordſhips marchers, and yet are laid to be in the *marches*.

THEN we ſhew diverſe accounts of *auditors* in the Duchy from *H.* IV. downwards, where the indorſement is *in marchiis Walliae*, and the contents are poſſeſſions only of *Hereford* and *Gloceſterſhire*, (for in *Shropſhire* and *Worceſterſhire* the Duchy hath no lands) and whereas they would put it off with a *cuique in ſua arte credendum*, they would believe them, if it were in matter of accounts; we do not alledge them as *auditors*, but as thoſe that ſpeak *Engliſh* to prove the common uſe of the word, *loquendum ut vulgus*.

WE ſhew likewiſe an ancient record of a patent to *Harbert* in 15 *E.* IV. where *Kilpeck* is laid to be in *com. Hereford* in *marchiis Walliae*; and laſtly, we ſhew again the ſtatute of 27 *E.* III. where proviſion is made, that men ſhall labour in the ſummer, where they dwell in the winter; and there is an exception of the people of the counties of *Stafford* and *Lancaſhire*, &c. and of the marches of *Wales* and *Scotland*; where it is moſt plain, that the marches of *Wales* are meant for counties, becauſe they are coupled both with *Stafford* and *Lancaſhire*, which are counties, and with the marches of *Scotland* which are likewiſe counties: and as it is informed, the labourers of thoſe four ſhires do come forth of their ſhires, and are known by the name of *Cokers* to this day.

To this we add two things, which are worthy conſideration; the one that there is no reaſon to put us to the proof of the uſe of this word *marches* ſixty years ago, conſidering that uſage ſpeaks for us; the other that there ought not to be required of us to ſhew ſo frequent an uſe of the word *marches* of ancient time in our ſenſe, as they ſhewed in theirs, becauſe there was not the like occaſion: for when a lordſhip marcher was mentioned it was of neceſſity to lay it in the *marches*, becauſe they were out of all counties, but when land is mentioned in any of theſe counties, it is ſuperfluous to add in the marches; ſo as there was no occaſion to uſe the word *marches*, but either for a more brief and compendious ſpeech to avoid the naming of the four ſhires, as it is in the ſtatute of 25 *E.* III. and in the indorſement of accounts, or to give a court cognizance and juriſdiction, as in the bills of complaint, or *ex abundanti*, as in the record of *Kilpeck*.

THERE reſteth the third main part, whereby they endeavour to weaken and extenuate the proofs, which we offer touching practice and poſſeſſion, wherein they alledge five things.

FIRST, that *Briſtol* was in until 7 *Eliz.* and then exempted.

SECONDLY, that *Cheſhire* was in until 11 *Eliz.* and then went out.

THIRDLY, they alledge certain words in the inſtructions to *Cholmley* vice-preſident in 11 *Eliz.* at which time the ſhires were firſt comprehended in the inſtructions by name, and in theſe words *annexed by our commiſſion:* whereupon they would infer that they were not brought in the ſtatute, but only came in by inſtructions, and do imagine that when *Cheſhire* went out, they came in.

FOURTHLY, they ſay that the intermeddling with thoſe four ſhires before the ſtatute was but an uſurpation and toleration rather than any lawful and ſettled juriſdiction; and it was compared to that, which is done by the judges in their circuits, who end many cauſes upon petitions.

FIFTHLY,

FIFTHLY, they alledge Sir *John Mullen*'s caſe, where it is ſaid *conſuetudo non praejudicat veritati*.

THERE was moved alſo, tho' it were not by the council, but from the judges themſelves, as an extenuation, or at leaſt an obſcuring of the proofs of the uſage and practice, in that we ſhew forth no inſtructions from 17 *H.* VIII. to 1 *Mariae*.

TO theſe ſix points I will give anſwer, and as I conceive with ſatisfaction.

FOR *Briſtol* I ſay, it teacheth them the right way, if they can follow it; for *Briſtol* was not exempted by any opinion of law, but was left out of the inſtructions upon ſupplication made to the Queen.

FOR *Cheſhire* we have anſwered it before, that the reaſon was, becauſe it was not probable that the ſtatute meant to make that ſhire ſubject to the juriſdiction of that council, conſidering it was not ſubject to the high courts at *Weſtminſter*, in regard it was a county *Palatine*. And whereas they ſaid, that ſo was *Flintſhire* too, it matcheth not, becauſe *Flintſhire* is named in the ſtatute for one of the twelve ſhires of *Wales*.

WE ſhewed you likewiſe effectual differences between *Cheſhire* and theſe other ſhires: for that *Cheſhire* hath a chancery in itſelf, and over *Cheſhire* the Princes claim juriſdiction, as earl of *Cheſter*; to all which you reply nothing.

THEREFORE I will add this only, that *Cheſhire* went out *ſecundo flumine*, with the good will of the ſtate; and this is ſought to be evicted *adverſo flumine*, croſs the ſtate; and as they have opinion of four judges for the excluding of *Cheſhire*, ſo we have the opinions of two great learned men, *Gerrard* and *Bromley*, for the including of *Worceſter*; whoſe opinions, conſidering it was but matter of opinion, and came not judicially in queſtion, are not inferior to any two of the other; but we ſay that there is no oppoſition or repugnancy between them, but both may ſtand.

FOR *Cholmley's* inſtructions, the words may well ſtand, *that thoſe ſhires are annexed by commiſſion*; for the King's commiſſion or inſtructions (for thoſe words are commonly confounded) muſt co-operate with the ſtatute, or elſe they cannot be annexed. But for that conceit that they ſhould come in but in 11, when *Cheſhire* went out, no man that is in his wits can be of that opinion, if he mark it: for we ſee that the town of *Gloceſter*, &c. is named in the inſtructions of 1 *Mar.* and no man I am ſure will think that *Gloceſter* town ſhould be in, and *Gloceſterſhire* out.

FOR the conceit that they had but *juriſdictionem precariam*, the precedents ſhew plainly the contrary; for they had coercion, and they did fine and impriſon, which the judges do not upon petitions; and beſides, they muſt remember that many of our precedents, which we did ſhew forth, were not of ſuits originally commenced there, but of ſuits remanded from hence out of the King's courts, as to their proper juriſdiction.

FOR Sir *John Mullen*'s caſe, the rule is plain and ſound, that where the law appears contrary, uſage cannot controul law, which doth not at all infringe the rule of *optima legum interpres conſuetudo*; for uſage may expound law, though it cannot over-rule law.

BUT of the other ſide I could ſhew you many caſes, where ſtatutes have been expounded directly againſt their expreſs letter to uphold precedents and uſage, as 2, & 3, *Phil. & Mar.* upon the ſtatute of *Weſtminſter*, that ordained that the judges *coram quibus formatum erit appellum* ſhall enquire of the damages, and yet the law ruled that it ſhall be enquired before the judges of

niſi prius. And the great reverence given to precedents, appeareth in 39 *H.* VI. 3 *E.* IV. and a number of other books; and the difference is exceedingly well taken in *Slade*'s caſe, *Coke*'s reports 4. that is, where the uſage runs but amongſt clerks, and where it is in the eye and notice of the judge; for there it ſhall be preſumed, ſaith the book, that if the law were otherwiſe than the uſage hath gone, that either the council or the parties would have excepted to it, or the judges *ex officio* would have diſcerned of it, and found it; and we have ready for you a calendar of judges more than ſit at this table, that have exerciſed juriſdiction over the ſhires in that county.

As for exception, touching the want of certain inſtructions, I could wiſh we had them; but the want of them, in my underſtanding, obſcureth the caſe little. For let me obſerve unto you, that we have three forms of inſtructions concerning theſe ſhires extant; the firſt names them not expreſly, but by reference it doth, *viz.* that they ſhall hear and determine, *&c.* within any the *places* or *counties* within any of their commiſſions; and we have one of the commiſſions, wherein they were named; ſo as upon the matter they are named. And of this form is the ancient inſtructions before the ſtatute 17 *H.* VIII. when the Princeſs *Mary* went down.

The ſecond form of inſtructions go farther, for they have the towns, and exempted places within the counties named, with *tanquam* as well within the city of *Gloceſter*, the liberties of the Duchy of *Lancaſter*, &c. as within any of the counties of any of their commiſſions, which clearly admits the counties to be in before. And of this form are the inſtructions 1 *Mariae*, and ſo long until 11 *Eliz.*

And the third form, which hath been continued ever ſince, hath the ſhires comprehended by name. Now it is not to be thought, but the inſtructions which are wanting, are according to one of theſe three forms, which are extant. Take even your choice, for any of them will ſerve to prove that the practice there was ever authorized by the inſtructions here: and ſo upon the whole matter, I pray report to be made to his Majeſty, that the preſident and the council hath juriſdiction according to his inſtructions, over the four ſhires, by the true conſtruction of the ſtatute of 34 *H.* VIII.

A draught of an act againſt an uſurious ſhift of gain, in delivering of commodities inſtead of money, made by the Lord Chancellor *Bacon*, found amongſt his lordſhip's papers by Dr. *Rawley*, and recommended by him to be publiſhed.

WHEREAS it is an uſual practice, to the undoing and overthrowing many young gentlemen and others, that when men are in neceſſity, and deſire to borrow money, they are anſwered, that money cannot be had, but that they may have commodities ſold unto them upon credit, whereof they may make money as they can: in which courſe it ever comes to paſs, not only that ſuch commodities are bought at extreme high rates, and ſold again far under foot to a double loſs; but alſo that the party which is to borrow, is wrapt in bonds and counter-bonds; ſo that upon a little money which he receiveth, he is ſubject to penalties and ſuits of great value.

BE it therefore enacted by the authority of this preſent parliament, that if any man after forty days, from the end of this preſent ſeſſion of parliament to be accounted, ſhall ſell in groſs ſale any quantity of wares or commodities unto ſuch a one as is no retailer, chapman, or known broker of the ſame commodities, and knowing that it is bought to be ſold again, to help and furniſh any perſon that tradeth not in the ſame commodity with money, he ſhall be without all remedy by law, or cuſtom, or decree, or otherwiſe to recover or demand any ſatisfaction for the ſaid wares or commodities, what aſſurance ſoever he ſhall have by bond, ſurety, pawn or promiſe of the party, or any other in his behalf. And that all bonds and aſſurances whatſoever made for that purpoſe directly or indirectly, ſhall be utterly void.

AND be it farther enacted by the authority aforeſaid, that every perſon, which ſhall after the time aforeſaid be uſed or employed as a broker, mean or procurer, for the taking up of ſuch commodities, ſhall forfeit for every ſuch offence the ſum of one hundred pounds, the ſame to be, &c. *and ſhall be farther puniſhed by ſix months impriſonment, without bail or mainpriſe, and by the pillory.*

ORDINANCES

MADE

By the Lord Chancellor *BACON*,

For the better and more regular adminiſtration of juſtice in the chancery, to be daily obſerved, ſaving the prerogative of the court.

Decrees. NO decree ſhall be reverſed, altered, or explained, being once under the great ſeal, but upon bill of review; and no bill of review ſhall be admitted, except it contain either error in law, appearing in the body of the decree, without farther examination of matters in fact, or ſome new matter which hath riſen in time after the decree, and not any new proof which might have been uſed when the decree was made: nevertheleſs upon new proof, that is come to light after the decree made, and could not poſſibly have been uſed at the time, when the decree paſſed, a bill of review may be grounded by the ſpecial licence of the court, and not otherwiſe.

2. In caſe of miſcaſting (being a matter demonſtrative) a decree may be explained, and reconciled by an order without a bill of review; not underſtanding by miſcaſting any pretended miſrating or miſvaluing, but only error in the auditing or numbering.

3. No bill of review ſhall be admitted, or any other new bill to change matter decreed, except the decree be firſt obeyed and performed; as if it be for land, that the poſſeſſion be yielded; if it be for money, that the money be paid; if it be for evidences, that the evidences be brought in; and ſo in other caſes which ſtand upon the ſtrength of the decree alone.

4. But if any act be decreed to be done which extinguiſheth the parties right at the common law, as making of aſſurance or releaſe, acknowledging ſatisfaction, cancelling of bonds, or evidences, and the like; thoſe parts of the decree are to be ſpared until the bill of review be determined; but ſuch ſparing is to be warranted by publick order made in court.

5. No bill of review ſhall be put in, except the party that prefers it enter into recognizance with ſureties for ſatisfying of coſts and damages for the delay, if it be found againſt him.

6. No decrees ſhall be made upon pretence of equity, againſt the expreſs proviſion of an act of parliament: nevertheleſs if the conſtruction of ſuch act of parliament hath for a time gone one way in general opinion and reputation, and after by a later judgment hath been controlled, then relief may be given upon matter of equity, for caſes ariſing before the ſaid judgment, becauſe the ſubject was in no default.

7. Imprisonment for breach of a decree is in nature of an execution, and therefore the cuſtody ought to be ſtraight, and the party not to have

any

any liberty to go abroad, but by ſpecial licence of the Lord Chancellor; but no cloſe impriſonment is to be, but by expreſs order for wilful and extraordinary contempts and diſobedience, as hath been uſed.

8. In caſe of enormous and obſtinate diſobedience in breach of a decree, an injunction is to be granted *ſub poena* of a ſum; and upon *affidavit*, or other ſufficient proof, of perſiſting in contempt, fines are to be pronounced by the Lord Chancellor in open court, and the ſame to be eſtreated down into the hanaper if cauſe be, by a ſpecial order.

9. In caſe of a decree made for the poſſeſſion of land, a writ of execution goes forth; and if that be diſobeyed, then proceſs of contempt according to the courſe of the court againſt the perſon, unto a commiſſion of rebellion; and then a Serjeant at Arms by ſpecial warrant: and in caſe the Serjeant at Arms cannot find him, or be reſiſted; or upon the coming in of the party, and his commitment, if he perſiſt in diſobedience, an injunction is to be granted for the poſſeſſion; and in caſe alſo that be diſobeyed, then a commiſſion to the ſheriff to put him into poſſeſſion.

10. Where the party is committed for breach of a decree, he is not to be enlarged until the decree be fully performed in all things, which are to be done preſently. But if there be other parts of the decree to be performed at days, or times to come, then he may be enlarged by order of the court upon recognizance, with ſureties to be put in for the performance thereof *de futuro*, otherwiſe not.

11. Where cauſes come to a hearing in court, no decree bindeth any perſon who was not ſerved with proceſs *ad audiendum judicium*, according to the courſe of the court, or did appear *gratis* in perſon in court.

12. No decree bindeth any that cometh in *bona fide*, by conveyance from the defendant before the bill exhibited, and is made no party, neither by bill nor the order: but where he comes in *pendente lite*, and while the ſuit is in full proſecution, and without any colour of allowance or privity of the court, there regularly the decree bindeth; but if there were any intermiſſion of ſuit, or the court made acquainted with the conveyance, the court is to give order upon the ſpecial matter according to juſtice.

13. Where cauſes are diſmiſſed upon full hearing, and the diſmiſſion ſigned by the Lord Chancellor, ſuch cauſes ſhall not be retained again, nor new bill exhibited, except it be upon new matter, like to the caſe of the bill of review. Diſmiſſions.

14. In caſe of all other diſmiſſions, which are not upon hearing of the cauſe, if any new bill be brought, the diſmiſſion is to be pleaded; and after reference and report of the contents of both ſuits, and conſideration taken of the former orders and diſmiſſion, the court ſhall rule the retaining or diſmiſſing of the new bill, according to juſtice and the nature of the caſe.

15. All ſuits grounded upon wills nuncupative, leaſes parol, or upon long leaſes that tend to the defeating of the King's tenures, or for the ſtabliſhing of perpetuities, or grounded upon remainders put into the crown, to defeat purchaſers; or for brokage or rewards to make marriages; or for bargains at play and wagers; or for bargains for offices contrary to the ſtatute of 5 and 6 *Edw.* VI. or for contracts upon uſury or ſimony, are regularly to be diſmiſſed upon motion, if they be the ſole effect of the bill; and if there be no ſpecial circumſtances to move the court to allow their proceedings, and all ſuits under the value of ten pounds, are regularly to be diſmiſſed. *V. poſtea* Sect. 58, 60.

16. DISMISSIONS are properly to be prayed, and had, either upon hearing, or upon plea unto the bill, when the cauſe comes firſt into the court; but diſmiſſions are not to be prayed after the parties have been at charge of examination, except it be upon ſpecial cauſe.

17. IF the plaintiff diſcontinue the proſecution, after all the defendants have anſwered, above the ſpace of one whole term, the cauſe is to be diſmiſſed of courſe without any motion; but after replication put in, no cauſe is to be diſmiſſed without motion and order of the court.

Election of Suits. 18. DOUBLE vexation is not to be admitted; but if the party ſue for the ſame cauſe at the common law, and in chancery, he is to have a day given to make his election where he will proceed, and in default of making ſuch election to be diſmiſſed.

Certiorari. 19. WHERE cauſes are removed by ſpecial *certiorari* upon a bill, containing matter of equity, the plaintiff is, upon receipt of his writ, to put in bond to prove his ſuggeſtions within fourteen days after the receipt; which if he do not prove, then upon certificate from either of the examiners preſented to the Lord Chancellor, the cauſe ſhall be diſmiſſed with coſts, and a *procedendo* to be granted.

Injunction. 20. NO injunction of any nature ſhall be granted, revived, diſſolved or ſtayed upon any private petition.

21. No injunction to ſtay ſuits at the common law ſhall be granted upon priority of ſuit only, or upon ſurmiſe of the plaintiff's bill only; but upon matter confeſſed in the defendant's anſwer, or matter of record, or writing plainly appearing, or when the defendant is in contempt for not anſwering, or that the debt deſired to be ſtayed appeareth to be old, and hath ſlept long, or the creditor or the debtor hath been dead ſome good time before the ſuit brought.

22. WHERE the defendant appears not, but ſits an attachment; or when he doth appear, and departs without anſwer, and is under attachment for not anſwering; or when he takes oath he cannot anſwer without ſight of evidences in the country; or where after anſwer he ſues at common law by attorney, and abſents himſelf beyond ſea; in theſe caſes an injunction is to be granted for the ſtay of all ſuits at the common law, until the party anſwer or appear in perſon in court, and the court give farther order: but nevertheleſs upon anſwer put in, if there be no motion made the ſame term, or the next general ſeal after the term, to continue the injunction in regard of the inſufficiency of the anſwer put in, or in regard of matter confeſſed in the anſwer, then the injunction to die and diſſolve without any ſpecial order.

23. IN the caſe aforeſaid, where an injunction is to be awarded for ſtay of ſuits at the common law, if the like ſuit be in the chancery, either by *ſcire facias*, or privilege, or *Engliſh* bill, then the ſuit is to be ſtayed by order of the court, as it is in other courts by injunction, for that the court cannot enjoin itſelf.

24. WHERE an injunction hath been obtained for ſtaying of ſuits, and no proſecution is had for the ſpace of three terms, the injunction is to fall of itſelf without farther motion.

25. WHERE a bill comes in after an arreſt at the common law for debt, no injunction ſhall be granted without bringing the principal money into court, except there appear in the defendant's anſwer, or by ſight of writings plain matter tending to diſcharge the debt in equity: but if an injunction be awarded and diſobeyed, in that caſe no money ſhall be brought in, or depoſited in regard of the contempt.

26. IN-

26. INJUNCTIONS for poſſeſſion are not to be granted before a decree, but where the poſſeſſion hath continued by the ſpace of three years, before the bill exhibited, and upon the ſame title; and not upon any title by leaſe, or otherwiſe determined.

27. IN caſe where the defendant ſits all the proceſs of contempt, and cannot be found by the Serjeant at Arms, or reſiſts the Serjeant, or makes reſcue, a ſequeſtration ſhall be granted of the land in queſtion; and if the defendant render not himſelf within the year, then an injunction for the poſſeſſion.

28. INJUNCTIONS againſt felling of timber, ploughing up of ancient paſtures, or for the maintaining of incloſures, or the like, ſhall be granted according to the circumſtances of the caſe; but not in caſe where the defendant upon his anſwer claimeth an eſtate of inheritance, except it be where he claimeth the land in truſt, or upon ſome other ſpecial ground.

29. No ſequeſtration ſhall be granted but of lands, leaſes, or goods in queſtion, and not of any other lands or goods, not contained in the ſuits. Sequeſtrations.

30. WHERE a decree is made for rent to be paid out of land, or a ſum of money to be levied out of the profits of land, there a ſequeſtration of the ſame lands being in the defendant's hands may be granted.

31. WHERE the decrees of the provincial council, or of the court of requeſts, or the Queen's court, are by contumacy or other means interrupted; there the court of chancery upon a bill preferred for corroborations of the ſame juriſdictions, decrees, and ſentences, ſhall give remedy.

32. WHERE any cauſe comes to a hearing that hath been formerly decreed in any other of the King's courts at *Weſtminſter*, ſuch decree ſhall be firſt read, and then to proceed to the reſt of the evidence on both ſides.

33. SUITS after judgment may be admitted according to the antient cuſtom of the chancery, and the late royal deciſion of his Majeſty, of record, after ſolemn and great deliberation: but in ſuch ſuits it is ordered, that bond be put in with good ſureties to prove the ſuggeſtions of the bill. Suits after judgment.

34. DECREES upon ſuits brought after judgment ſhall contain no words to make void or weaken the judgment, but ſhall only correct the corrupt conſcience of the party, and rule him to make reſtitution, or perform other acts, according to the equity of the cauſe.

Orders, and the Office of the REGISTERS.

35. THE regiſters are to be ſworn, as hath been lately ordered.

36. IF any order ſhall be made, and the court not informed of the laſt material order formerly made, no benefit ſhall be taken by ſuch order, as granted by abuſe and ſurreption; and to that end the regiſters ought duly to mention the former order in the later.

37. No order ſhall be explained upon any private petition but in court as they are made, and the regiſter is to ſet down the orders as they were pronounced by the court, truly at his peril, without troubling the Lord Chancellor by any private attending of him to explain his meaning; and if any explanation be deſired, it is to be done by publick motion, where the other party may be heard.

38. No draught of any order ſhall be delivered by the regiſter to either party, without keeping a copy by him, to the end that if the order be not entered, nevertheleſs the court may be informed what was formerly done,

and not put to new trouble and hearing; and to the end alſo that knowledge of orders be not kept back too long from either party, but may preſently appear at the office.

39. WHERE a cauſe hath been debated upon hearing of both parties, and opinion hath been delivered by the court, and nevertheleſs the cauſe referred to treaty, the regiſters are not to omit the opinion of the court, in drawing of the order of reference, except the court doth ſpecially declare that it be entred without any opinion either way; in which caſe nevertheleſs the regiſters are out of their ſhort note, to draw up ſome more full remembrance of that that paſſed in court, to inform the court if the cauſe come back and cannot be agreed.

40. THE regiſters upon ſending of their draught unto the counſel of the parties, are not to reſpect the interlineations, or alterations of the ſaid counſel (be the ſaid counſel never ſo great,) farther, than to put them in remembrance of that which was truly delivered in court, and ſo to conceive the order upon their oath and duty, without any farther reſpect.

41. THE *regiſters* are to be careful in the penning and drawing up of decrees, and ſpecial matters of difficulty and weight; and therefore when they preſent the ſame to the Lord Chancellor, they ought to give him underſtanding which are ſuch decrees of weight, that they may be read and reviewed before his lordſhip ſign them.

42. THE decrees granted at the rolls are to be preſented to his lordſhip, with the orders whereupon they are drawn, within two or three days after, every term.

43. INJUNCTIONS for poſſeſſion, or for ſtay of ſuits after verdict, are to be preſented to his lordſhip, together with the orders whereupon they go forth, that his lordſhip may take conſideration of the order before he ſign them.

44. WHERE any order upon the ſpecial nature of the caſe ſhall be made againſt any of theſe general rules, there the regiſter ſhall plainly and expreſly ſet down the particulars, reaſons and grounds, moving the court to vary from the general rule.

References. 45. No reference upon a demurrer, or queſtion touching the juriſdiction of the court, ſhall be made to the maſters of the chancery; but ſuch demurrers ſhall be heard and ruled in court, or by the Lord Chancellor himſelf.

46. No order ſhall be made for the confirming or ratifying of any report without day firſt given, by the ſpace of a ſevenight at the leaſt, to ſpeak to it in court.

47. No reference ſhall be made to any maſters of the court, or any other commiſſioners to hear and determine, where the cauſe is gone ſo far as to examination of witneſſes, except it be in ſpecial cauſes of parties near in blood, or of extreme poverty, or by conſent and general reference of the eſtate of the cauſe, except it be by conſent of the parties to be ſparingly granted.

48. No report ſhall be reſpected in court, which exceedeth the warrant of the order of reference.

49. THE maſters of the court are required not to certify the ſtate of any cauſe, as if they would make breviate of the evidence on both ſides, which doth little eaſe the court, but with ſome opinion, or otherwiſe in caſe they think it too doubtful to give opinion, and therefore make ſuch ſpecial certificate

tificate, the cauſe is to go on to a judicial hearing, without reſpect had to the ſame.

50. MATTERS of account, unleſs it be in very weighty cauſes, are not fit for the court, but to be prepared by reference, with this difference nevertheleſs, that the cauſe comes firſt to a hearing; and upon the entrance into a hearing, they may receive ſome direction, and be turned over to have the accounts conſidered, except both parties before a hearing do conſent to a reference of the examination of the accounts, to make it more ready for a hearing.

51. THE like courſe to be taken for the examination of court rolls, upon cuſtoms and copies, which ſhall not be referred to any one maſter, but to two maſters at the leaſt.

52. No reference to be made of the inſufficiency of an anſwer, without ſhewing of ſome particular point of the defect, and not upon ſurmiſe of the inſufficiency in general.

53. WHERE a truſt is confeſſed by the defendant's anſwer, there needeth no farther hearing of the cauſe, but a reference preſently to be made upon the account, and ſo to go on to a hearing of the accounts.

54. IN all ſuits where it ſhall appear, upon the hearing of the cauſe, that the plaintiff had not *probabilem cauſam litigandi*, he ſhall pay unto the defendant his utmoſt coſts, to be aſſeſſed by the court. Suits in court.

55. IF any bill, anſwers, replication, or rejoinder, ſhall be found of an immoderate length, both the party and the counſel under whoſe hand it paſſeth ſhall be fined. Bills, demurrers, anſwers, pleadings, and copies.

56. IF there be contained in any bill, anſwer, or other pleadings, or any interrogatory, any matter libellous or ſlanderous againſt any that is not party to the ſuit, or againſt ſuch as are parties to the ſuit, upon matters impertinent, or in derogation of the ſettled authorities of any of his Majeſty's courts; ſuch bills, anſwers, pleadings, or interrogatories ſhall be taken off the file and ſuppreſſed, and the parties ſeverally puniſhed by commitment or ignominy, as ſhall be thought fit for the abuſe of the court, and the counſellors at law, who have ſet their hands, ſhall likewiſe receive reproof or puniſhment, if cauſe be.

57. DEMURRERS and pleas which tend to diſcharge the ſuit ſhall be heard firſt upon every day of orders, that the ſubject may know whether he ſhall need farther attendance or no.

58. A demurrer is properly upon matter defective, contained in the bill it ſelf, and no foreign matter; but a plea is of foreign matter to diſcharge or ſtay the ſuit, as that the cauſe hath been formerly diſmiſſed, or that the plaintiff is outlawed, or excommunicated; or there is another bill depending for the ſame cauſe, or the like: and ſuch plea may be put in without oath, in caſe where the matter of the plea appear upon record; but if it be any thing that doth not appear upon record, the plea muſt be upon oath.

59. No plea of outlawry ſhall be allowed without pleading the record *ſub pede ſigilli*, nor plea of excommunication, without the ſeal of the ordinary.

60. WHERE any ſuit appeareth upon the bill to be of the natures which are regularly to be diſmiſſed according to the fifteenth ordinance, ſuch matter is to be ſet forth by way of demurrer.

61. WHERE an anſwer ſhall be certified inſufficient, the defendant is to pay coſts; and if a ſecond anſwer be returned inſufficient, in the points before certified inſufficient, then double coſts, and upon the third treble coſts, and upon the fourth quadruple coſts, and then to be committed alſo until he

he hath made a perfect anſwer, and to be examined upon interrogatories touching the points defective in his anſwer; but if any anſwer be certified ſufficient, the plaintiff is to pay coſts.

62. No inſufficient anſwer can be taken hold of after replication put in, becauſe it is admitted ſufficient by the replication.

63. An anſwer to a matter charged as the defendant's own fact muſt be direct, without ſaying it is to his remembrance, or as he believeth, if it be laid down within ſeven years before; and if the defendant deny the fact, he muſt traverſe it directly, and not by way of negative pregnant; as if a fact be laid to be done with diverſe circumſtances, the defendant may not traverſe it literally as it is laid in the bill, but muſt traverſe the point of ſubſtance; ſo if he be charged with the receipt of one hundred pounds, he muſt traverſe that he hath not received a hundred pounds, or any part thereof; and if he have received part, he muſt ſet forth what part.

64. If a hearing be prayed upon bill and anſwer, the anſwer muſt be admitted to be true in all points, and a decree ought not to be made, but upon hearing the anſwer read in court.

65. Where no counſel appears for the defendant at the hearing, and the proceſs appears to have been ſerved, the anſwer of ſuch defendant is to be read in court.

66. No new matter is to be contained in any replication, except it be to avoid matter ſet forth in the defendant's anſwer.

67. All copies in chancery ſhall contain fifteen lines in every ſheet thereof, written orderly and unwaſtfully, unto which ſhall be ſubſcribed the name of the principal clerk of the office where it is written, or his deputy, for whom he will anſwer, for which only ſubſcription no fee at all ſhall be taken.

Commiſſions, examinations, and depoſitions.

68. All commiſſions for examination of witneſſes ſhall be *ſuper interr. incluſis* only, and no return of depoſitions into the court ſhall be received, but ſuch only as ſhall be either compriſed in one roll, ſubſcribed with the name of the commiſſioners, or elſe in diverſe rolls, whereof each one ſhall be ſo ſubſcribed.

69. If both parties join in commiſſion, and upon warning given the defendant bring his commiſſioners, but produceth no witneſſes, nor miniſtreth interrogatories, but after ſeek a new commiſſion, the ſame ſhall not be granted: but nevertheleſs upon ſome extraordinary excuſe of the defendant's default, he may have liberty granted by ſpecial order to examine his witneſſes in court upon the former interrogatories, giving the plaintiff or his attorney notice, that he may examine alſo if he will.

70. The defendant is not to be examined upon interrogatories, except it be in very ſpecial caſes, by expreſs order of the court, to ſift out ſome fraud or practice pregnantly appearing to the court, or otherwiſe upon offer of the plaintiff to be concluded by the anſwer of the defendant without any liberty to diſprove ſuch anſwer, or to impeach him after of perjury.

71. Decrees in other courts may be read upon hearing without the warrant of any ſpecial order: but no depoſitions taken in any other court are to be read but by ſpecial order, and regularly the court granteth no order for reading of depoſitions, except it be between the ſame parties, and upon the ſame title and cauſe of ſuit.

72. No

72. No examination is to be had of the credit of any witneſs but by ſpecial order, which is ſparingly to be granted.

73. WITNESSES ſhall not be examined *in perpetuam rei memoriam*, except it be upon the ground of a bill firſt put in, and anſwer thereunto made, and the defendant or his attorney made acquainted with the names of the witneſſes that the plaintiff would have examined, and ſo publication to be of ſuch witneſſes with this reſtraint nevertheleſs, that no benefit ſhall be taken of the depoſitions of ſuch witneſſes, in caſe they may be brought *viva voce* upon the trial, but only to be uſed in caſe of death before the trial, or age, or impotency, or abſence out of the realm at the trial.

74. No witneſſes ſhall be examined after publication, except it be by conſent, or by ſpecial order, *ad informandam conſcientiam judicis*, and then to be brought cloſe ſealed up to the court to peruſe or publiſh, as the court ſhall think good. *Ad informandam conſcientiam judicis.*

75. No affidavit ſhall be taken or admitted by any maſter of the chancery, tending to the proof or diſproof of the title, or matter in queſtion, or touching the merits of the cauſe, neither ſhall any ſuch matter be colourably inſerted in any affidavit for ſerving of proceſs. Affidavits.

76. No affidavit ſhall be taken againſt affidavit, as far as the maſters of the chancery can have knowledge; and if any ſuch be taken, the latter affidavit ſhall not be uſed nor read in court.

77. IN caſe of contempts grounded upon force or ill words, upon ſerving of proceſs, or upon words of ſcandal of the court, proved by affidavit, the party is forthwith to ſtand committed; but for other contempts againſt the orders or decrees of the court an attachment goes forth, firſt, upon affidavit made, and then the party is to be examined upon interrogatories, and his examination referred; and if upon his examination he confeſs matter of contempt, he is to be committed; if not, the adverſe party may examine witneſſes to prove the contempt: and therefore if the contempt appear, the party is to be committed, but if not, or if the party that purſues the contempt do fail in putting in interrogatories, or other proſecution, or fail in the proof of the contempt, then the party charged with the contempt is to be diſcharged with good coſts.

78. THEY that are in contempt, ſpecially ſo far as proclamation of rebellion, are not to be heard, neither in that ſuit, nor any other, except the court of ſpecial grace ſuſpend the contempt.

79. IMPRISONMENT upon contempt for matters paſt, may be diſcharged of grace after ſufficient puniſhment, or otherwiſe diſpenſed with: but if the impriſonment be for not performance of any order of the court in force, they ought not to be diſcharged except they firſt obey, but the contempt may be ſuſpended for a time.

80. INJUNCTIONS, ſequeſtrations, diſmiſſions, retainers upon diſmiſſions, or final orders, are not to be granted upon petitions. Petitions.

81. No former order made in court is to be altered, croſſed, or explained upon any petition; but ſuch orders may be ſtayed upon petition for a ſmall ſtay, until the matter may be moved in court.

82. No commiſſion for examination of witneſſes ſhall be diſcharged; nor no examinations or depoſitions ſhall be ſuppreſſed upon petition, except it be upon point of courſe of the court firſt referred to the clerks, and certificate thereupon.

83. No demurrer ſhall be over-ruled upon petition.

84. No *ſcire facias* ſhall be awarded upon recognizances not enrolled, nor upon recognizances enrolled, unleſs it be upon examination of the record with the writ; nor no recognizance ſhall be enrolled after the year, except it be upon ſpecial order from the lord chancellor.

85. No writ of *ne exeat regnum*, prohibition, conſultation, ſtatute of *Northampton*, *certiorari* ſpecial, or *procedendo* ſpecial, or *certiorari* or *procedendo* general, more than once in the ſame cauſe; *habeas corpus*, or *corpus cum cauſa*, *vi laica removend'*, or reſtitution thereupon, *de coronatore & viridario eligendo*, in caſe of a moving *de homine repleg. aſſiz.* or ſpecial patent, *de ballivo amovend'*, *certiorari ſuper praeſentationibus fact. coram commiſſariis ſewar'*, or *ad quod dampnum*, ſhall paſs without warrant under the Lord Chancellor's hand, and ſigned by him, ſave ſuch writs *ad quod dampnum*, as ſhall be ſigned by maſter attorney.

86. Writs of privilege are to be reduced to a better rule, both for the number of perſons that ſhall be privileged, and for the caſe of the privilege; and as for the number it ſhall be ſet down by *ſchedule:* for the caſe it is to be underſtood, that beſides perſons privileged as attendants upon the court, ſuitors and witneſſes are only to have privilege, *eundo, redeundo, & morando*, for their neceſſary attendance, and not otherwiſe; and that ſuch writ of privilege diſchargeth only an arreſt upon the firſt proceſs, but yet, where at ſuch times of neceſſary attendance the party is taken in execution, it is a contempt to the court, and accordingly to be puniſhed.

87. No *ſupplicavit* for the good behaviour ſhall be granted, but upon articles grounded upon the oath of two at the leaſt, or certificate of any one juſtice of aſſize, or two juſtices of the peace, with affidavit that it is their hands, or by order of the ſtar-chamber, or chancery, or other of the King's courts.

88. No recognizance of the good behaviour, or the peace taken in the country, and certified into the petty-bag, ſhall be filed in the year without warrant from the Lord Chancellor.

89. Writs of *ne exeat regnum* are properly to be granted according to the ſuggeſtion of the writ, in reſpect of attempts prejudicial to the King and ſtate, in which caſe the lord chancellor will grant them upon prayer of any the principal ſecretaries without cauſe ſhewing, or upon ſuch information as his lordſhip ſhall think of weight: but otherwiſe alſo they may be granted according to the practice of long time uſed in caſe of interlopers in trade, great bankrupts, in whoſe eſtate many ſubjects are intereſted, or other caſes that concern multitudes of the King's ſubjects, alſo in caſe of duels and diverſe others.

90. All writs, certificates, and whatſoever other proceſs *ret. coram Rege in Canc.* ſhall be brought into the chapel of the rolls, within convenient time after the return thereof, and ſhall be there filed upon their proper files and bundles as they ought to be; except the depoſitions of witneſſes, which may remain with any of the ſix clerks by the ſpace of one year next after the cauſe ſhall be determined by decree, or otherwiſe be diſmiſſed.

91. All injunctions ſhall be inrolled, or the tranſcript filed, to the end that if occaſion be, the court may take order to award writs of *ſcire facias* thereupon, as in antient time hath been uſed.

92. All days given by the court to ſheriffs to return their writs, or bring in their priſoners upon writs of privilege, or otherwiſe between party and party, ſhall be filed, either in the regiſter's office, or in the petty-bag reſpectively; and all recognizances taken to the King's uſe, or unto the court, ſhall

be duly inrolled in convenient time, with the clerks of the inrollment, and calendars made of them, and the calendars every *Michaelmas* term to be preſented to the Lord Chancellor.

93. In caſe of ſuits upon the commiſſions for charitable uſes, to avoid charge, there ſhall need no bill, but only exceptions to the decree, and anſwer forthwith to be made thereunto; and thereupon, and upon ſight of the inquiſition, and the decree brought unto the Lord Chancellor by the clerk of the petty-bag, his lordſhip, upon peruſal thereof, will give order under his hand for an abſolute decree to be drawn up.

94. Upon ſuit for the commiſſion of ſewers, the names of thoſe that are deſired to be commiſſioners are to be preſented to the Lord Chancellor in writing; then his lordſhip will ſend the names of ſome privy counſellor, lieutenant of the ſhire, or juſtices of aſſize, being reſident in the parts for which the commiſſion is prayed, to conſider of them, that they be not put in for private reſpects, and upon the return of ſuch opinion, his lordſhip will give farther order for the commiſſion to paſs.

95. No new commiſſion of ſewers ſhall be granted while the firſt is in force, except it be upon diſcovery of abuſe or fault in the firſt commiſſioners, or otherwiſe upon ſome great or weighty ground.

96. No commiſſion of bankrupt ſhall be granted, but upon petition firſt exhibited to the Lord Chancellor, together with names preſented, of which his lordſhip will take conſideration, and always mingle ſome learned in the law with the reſt; yet ſo as care be taken that the ſame parties be not too often uſed in commiſſions; and likewiſe care is to be taken that bond with good ſurety be entred into, in 200 *l.* at leaſt, to prove him a bankrupt.

97. No commiſſion of delegates in any cauſe of weight ſhall be awarded, but upon petition preferred to the Lord Chancellor, who will name the commiſſioners himſelf, to the end they may be perſons of convenient quality, having regard to the weight of the cauſe, and the dignity of the court from whence the appeal is.

98. Any man ſhall be admitted to defend *in forma pauperis* upon oath, but for plaintiffs they are ordinarily to be referred to the court of requeſts, or to the provincial councils, if the caſe ariſe in thoſe juriſdictions, or to ſome gentlemen in the country, except it be in ſome ſpecial caſes of commiſeration, or potency of the adverſe party.

99. Licences to collect for loſſes by fire or water are not to be granted, but upon good certificate; and not for decays of ſuretyſhip or debt, or any other caſualties whatſoever; and they are rarely to be renewed; and they are to be directed ever unto the county where the loſs did ariſe, if it were by fire, and the counties that abut upon it, as the caſe ſhall require; and if it were by ſea, then unto the county where the port is, from whence the ſhip went, and to ſome ſea-counties adjoining.

100. No exemplification ſhall be made of letters patent (*inter alia*) with omiſſion of the general words; nor of records made void, or cancelled; nor of the decrees of this court not inrolled; nor of depoſitions by parcel and fractions, omitting the reſidue of the depoſitions in court, to which the hand of the examiner is not ſubſcribed; nor of records of the court not being inrolled or filed; nor of records of any other court, before the ſame be duly certified to this court, and orderly filed here; nor of any records upon the ſight and examination of any copy in paper, but upon ſight and examination of the original.

101. And becauſe time and experience may diſcover ſome of theſe rules to be inconvenient, and ſome other to be fit to be added; therefore his lordſhip intendeth in any ſuch caſe from time to time to publiſh any ſuch revocations or additions.

THE

THE LEARNED READING OF Mr. *FRANCIS BACON*, One of her MAJESTY's Counſel at Law, UPON THE STATUTE of USES:

Being his double Reading to the Honourable SOCIETY of *GRAYS-INN.* 42 *Eliz.*

I HAVE choſen to read upon the law of uſes made 27 *Hen.* VIII. a law whereupon the inheritances of this realm are toſſed at this day like a ſhip upon the ſea, in ſuch ſort, that it is hard to ſay which bark will ſink, and which will get to the haven; that is to ſay, what aſſurances will ſtand good, and what will not. Neither is this any lack or default in their pilots the grave and learned judges: But the tides and currents of received errors, and unwarranted and abuſive experience have been ſo ſtrong, as they were not able to keep a right courſe according to the law, ſo as this ſtatute is in great part as a law made in the parliament, held 35 *Reginae*; for in 37 *Reginae*, by the notable judgment upon ſolemn arguments of all the judges aſſembled in the exchequer chamber, in the famous caſe between *Dillon* and *Freine*, concerning an aſſurance by *Chudleigh*, this law began to be reduced to a true and ſound expoſition, and the falſe and perverted expoſition, which had continued for ſo many years, though never countenanced by any rule or authority of weight, but only entertained in a popular conceit, and in practice at adventure, grew to be controuled; ſince which time (as it cometh to paſs always upon the firſt reforming of inveterate errors) many doubts, and perplexed queſtions have riſen, which are not yet reſolved, nor the law thereupon ſettled: the conſideration whereof moved me to take the occaſion of performing this particular duty to the houſe, to ſee if I could by my travel, bring the expoſition thereof to a more general good of the commonwealth.

HEREIN though I could not be ignorant of the difficulty of the matter, which he that taketh in hand ſhall ſoon find; or much leſs of my own unableneſs, which I had continual ſenſe and feeling of; yet becauſe I had more means of abſolution than the younger ſort, and more leiſure than the greater

greater ſort, I did think it not impoſſible to work ſome profitable effect; the rather becauſe where an inferior wit is bent and converſant upon one ſubject, he ſhall many times with patience and meditation diſſolve and undo many of the knots, which a greater wit diſtracted with many matters would rather cut in two than unknit: And at leaſt if my invention or judgment be too barren, or too weak; yet by the benefit of other arts, I did hope to diſpoſe or digeſt, the authorities or opinions which are in caſes of uſe in ſuch order and method, as they ſhould take light one from another, though they took no light from me. And like to the matter of my reading ſhall my manner be, for my meaning is to revive and recontinue the ancient form of reading, which you may ſee in Mr. *Frowicke*'s, upon the prerogative, and all other readings of ancient time, being of leſs oſtentation and more fruit, than the manner lately accuſtomed: for the uſe then was ſubſtantially to expound the ſtatutes, by grounds and diverſities; as you ſhall find the readings ſtill to run upon caſe of the like law, and contrary law; whereof each one includes the learning of a ground, the other the learning of a difference: and not to ſtir conciſe and ſubtle doubts, or to contrive a multitude of tedious and intricate caſes, whereof all ſaving one are buried, and the greater part of that one caſe which is taken, is commonly nothing to the matter in hand; but my labour ſhall be in the ancient courſe, to open the law upon doubts, and not to open doubts upon this law.

EXPOSITIO STATUTI.

THE expoſition of this ſtatute conſiſts, upon the matter without the ſtatute: upon the matter within the ſtatute.

THREE things, are to be conſidered concerning this ſtatute, and all other ſtatutes, which are helps and inducements to the right underſtanding of any ſtatute, and yet are no part of the ſtatute itſelf.

1. THE conſideration of the ſtatute at the common law.

2. THE conſideration of the miſchief which the ſtatute intendeth to redreſs, as alſo any other miſchief, which an expoſition of the ſtatute this way or that way may breed.

3. CERTAIN maxims of the common law, touching expoſition of ſtatutes: having therefore framed ſix diviſions according to the number of readings upon the ſtatute itſelf, I have likewiſe divided the matter without the ſtatute into ſix introductions or diſcourſes, ſo that for every day's reading I have made a triple proviſion.

1. A PREFACE, or introduction.

2. A DIVISION upon the law itſelf.

3. A FEW brief caſes, for exerciſe and argument.

THE laſt of which I would have forborn; and according to the ancient manner, you ſhould have taken ſome of my points upon my diviſions, one, two, or more, as you ſhould have thought good; ſave that I had this regard, that the younger ſort of the bar were not ſo converſant in matters upon the ſtatutes; and for that cauſe only I have interlaced ſome matters at the common law that are more familiar within the books.

1. THE firſt matter I will diſcourſe unto you, is the nature and definition of an uſe, and its inception and progreſſion before the ſtatute.

2. THE ſecond diſcourſe ſhall be of the ſecond ſpring of this tree of uſes ſince the ſtatute.

3. THE third diſcourſe ſhall be of the eſtate of the aſſurances of this realm

at this day upon uſes, and what kind of them is convenient and reaſonable and not fit to be touched, as far as ſenſe of law and natural conſtruction of the ſtatute will give leave; and what kind of them is convenient and meet to be ſuppreſſed.

4. The fourth diſcourſe ſhall be of certain rules and expoſitions of laws applied to this preſent purpoſe.

5. The fifth diſcourſe ſhall be of the beſt courſe to remedy the ſame inconveniencies now a-foot, by conſtruction of the ſtatute, without offering violence to the letter or ſenſe.

6. The ſixth and laſt diſcourſe ſhall be of the beſt courſe to remedy the ſame inconveniencies, and to declare the law by act of parliament; which laſt I think good to reſerve and not to publiſh.

The nature of a uſe is beſt diſcerned by conſidering what it is not, and then what it is; for it is the nature of all human ſcience and knowledge to proceed moſt ſafely by negative and excluſive, to what is affirmative and incluſive.

First, uſe is no right, title, or intereſt in law; and therefore maſter attorney who read upon this ſtatute ſaid well, that there are but two rights: *Jus in Re: Jus ad Rem.* The one is an eſtate which is *Jus in Re*, the other a demand which is *Jus ad Rem*, but a uſe is neither; ſo that in 24 *H.* VIII. it is ſaid that the ſaving of the ſtatute of 1 *R.* III. which ſaveth any right or intereſt of intails, muſt be underſtood of intails of the poſſeſſion, and not of the part of the uſe, becauſe a uſe is no right nor intereſt; ſo again, you ſee *Littleton*'s conceit, that an uſe ſhould amount to a tenancy at will, whereupon a releaſe might well inure, becauſe of privity, is controuled by 4 and 5 *H.* VII. and divers other books, which ſay that *ceſtuy que uſe* is puniſhable in an action of treſpaſs towards the feoffees; only 5 *H.* V. ſeemeth to be at ſome diſcord with other books, where it is admitted for law, that if there be *ceſtuy que uſe* of an advowſon, and he be out-lawed in a perſonal action, the King ſhould have the preſentment; which caſe Maſter *Evans* in the argument of *Chudleigh*'s caſe did ſeem to reconcile thus: where *ceſtuy que uſe* being outlawed, had preſented in his own name, there the King ſhould remove his incumbent; but no ſuch thing can be collected upon that book; and therefore I conceive the error grew upon this, that becauſe it was generally thought, that a uſe was but a pernancy of profits; and then again becauſe the law is, that upon outlawries, upon perſonal actions, the King ſhall have the pernancy of profits, they took that to be one and the ſelf-ſame thing which *ceſtuy que uſe* had, and which the King was entitled unto, which was not ſo; for the King had remedy in law for his pernancy of profits, but *ceſtuy que uſe* had none. The books go farther and ſay, that a uſe is nothing, as in 2 *H.* VII. *det fuit port*, and counted *ſur leas* for years rendring rent, *&c.* The defendant pleaded in bar, that the plaintiff *nihil habuit tempore dimiſſionis*: the plaintiff made a ſpecial replication, and ſhewed that he had an uſe, and iſſue joined upon that; wherefore it appeareth, that if he had taken iſſue upon the defendant's plea, it ſhould have been found againſt him. So again in 4 *Reginae*, in the caſe of the Lord *Sands*, the truth of the caſe was a fine levied by *ceſtuy que uſe* before the ſtatute, and this coming in queſtion ſince the ſtatute upon an averment by the plaintiff *quod partes finis nihil habuerunt*, it is ſaid that the defendant may ſhew the ſpecial matter of the uſe, and it ſhall be no departure from the firſt pleading of the fine; and it is ſaid farther that the averment given in 4 *H.* VII. *quod partes finis nihil habuerunt; nec in poſſeſſione, nec in uſu*, was ouſted upon this ſtatute of 27 *H.* VIII. and was no more now to be accepted: but yet it appears, that if iſſue had been taken upon

upon the general averment, without the ſpecial matter ſhewed, it ſhould have been found for him that took the averment, becauſe a uſe is nothing. But theſe books are not to be taken generally or groſly, for we ſee in the ſame books, when an uſe is ſpecially alledged, the law taketh knowledge of it; but the ſenſe of it is, that uſe is nothing for which remedy is given by the courſe of the common law, ſo as the law knoweth it, but protects it not; and therefore when the queſtion cometh whether it hath any being in nature or conſcience the law accepteth of it; and therefore *Littleton's* caſe is good law, that he which hath but forty ſhillings free-hold in uſe, ſhall be ſworn in an inqueſt, for it is ruled *ſecundum dominium naturale*, and not *ſecundum dominium legitimum, nam natura dominus eſt, quia fructum ex re percipit.* And ſo no doubt upon ſubſidies and taxes *ceſtuy que uſe* ſhould be valued as an owner: ſo likewiſe if *ceſtuy que uſe* had releaſed his uſe unto the feoffee for ſix pound, or contracted with a ſtranger for the like ſum, there is no doubt but it is a good condition or contract whereon to ground an action upon the caſe: for money for releaſe of a ſuit in the chancery is a good *quid pro quo*; therefore to conclude, though a uſe be nothing in law to yield remedy by courſe of law, yet it is ſomewhat in reputation of law and conſcience: for that may be ſomewhat in conſcience which is nothing in law, like as that may be ſomething in law which is nothing in conſcience; as if the feoffees had made a feoffment over in fee, *bona fide*, upon good conſideration, and upon a *ſubpoena* brought againſt them, they pleaded this matter in chancery, this had been nothing in conſcience, not as to diſcharge them of damages.

A SECOND negative fit to be underſtood is, that a uſe is no covin, nor is it a colluſion, as the word is now uſed; for it is to be noted, that where a man doth remove the ſtate and poſſeſſion of land, or goods, out of himſelf unto another upon truſt, it is either a ſpecial truſt, or a general truſt.

THE ſpecial truſt is either lawful or unlawful.

THE ſpecial truſt unlawful, is according to the caſe provided for by ancient ſtatutes of pernors of the profits; as where it is to defraud creditors, or to get men to maintain ſuits, or to defeat the tenancy to the *praecipe*, or the ſtatute of *mortmain*, or the lords of their wardſhips, or the like; and thoſe are termed frauds, covins or colluſions.

THE ſpecial truſt lawful is, as when I infeoff ſome of my friends, becauſe I am to go beyond the ſeas, or becauſe I would free the land from ſome general ſtatute, or bond, which I am to enter into, or upon intent to be reinfeoff'd, or intent to be vouched, and ſo to ſuffer a common recovery, or upon intent that the feoffees ſhall infeoff over a ſtranger, and infinite the like intents and purpoſes, which fall out in mens dealings and occaſions: and this we call confidence, and the books do call them intents; but where the truſt is not ſpecial, nor tranſitory, but general and permanent, there it is a uſe; and therefore theſe three are to be diſtinguiſhed, and not confounded, the covin, confidence, and uſe.

SO as now we are come by negatives to the affirmative, what a uſe is, agreeable to the definition in *Plowden*, 352. *Delamer's* caſe, where it is ſaid:

USE is a truſt repoſed by any perſon in the terre-tenant, that he may ſuffer him to take the profits, and he that will perform his intent. But it is a ſhorter ſpeech to ſay, that

Uſus eſt dominium fiduciarium: Uſe is an ownerſhip in truſt.

SO

So that *usus & status, sive possessio, potius differunt secundum rationem fori quam secundum naturam rei*, for that one of them is in court of law, the other in court of conscience; and for a trust which is the way to an use, it is exceeding well defined by a civilian of great understanding:

Fides est obligatio conscientiae unius ad intentionem alterius.

And they have a good division likewise of rights:

Jus precarium: Jus fiduciarium: Jus legitimum.

1. A right in courtesy, for the which there is no remedy at all.
2. A right in trust, for which there is a remedy only but in conscience.
3. A right in law.

So much of the nature and definition of an use.

It followeth to consider the parts and properties of an use: wherein by the consent of all books, as it was distinctly delivered by Justice *Walmsley* in 36 of *Elizabeth*:

A trust consisteth upon three parts.

The first, that the feoffee will suffer the feoffor to take the profits.

The second, that the feoffee upon request of the feoffor, or notice of his will, will execute the estates to the feoffor, or his heirs, or any other by his direction.

The third, that if the feoffee be disseised, and so the feoffor disturbed, the feoffee will re-enter, or bring an action to re-continue the possession, so that those three, pernancy of profits, execution of estates, and defence of the land, are the three points of trust.

The properties of an use, they are exceeding well set forth by *Fenner*, justice, in the same case; and they be three:

1. Uses (saith he) are created by confidence.
2. Preserved by privity, which is nothing else but a continuance of the confidence, without interruption: and
3. Ordered and guided by conscience: either by the private conscience of the feoffee; or the general conscience of the realm, which is chancery.

The two former of which (because they be matters more thoroughly beaten, and we shall have occasion hereafter to handle them) we will not now dilate upon:

But the third, we will speak somewhat of; both because it is a key to open many of the true reasons, and learnings of uses, and because it tendeth to decide our great and principal doubts at this day.

COKE sollicitor entring into his argument of *Chudleigh*'s case, said sharply and fitly: I will put never a case but it shall be of an use, for a use in law hath no fellow; meaning, that the learning of uses is not to be matched with other learnings. *Anderson*, chief justice, in the argument of the same case, did truly and profoundly controul the vulgar opinion collected upon 5 *E.* IV. that there might be *possessio fratris* of a use; for he said that it was no more but that the chancellor would consult with the rules of law, where the intention of the parties did not specially appear; and therefore the private conceit which *Glanvile* justice, cited in the 42 *Reginae* in the case of *Corbet* in the common pleas of one of *Lincolns-Inn*, whom he named not, but seemed to allow, is not found; which was, that a use was but a limitation, and did ensue the nature of a possession.

This very conceit was set on foot in 27 *H.* VIII. in the Lord *Darcie*'s case, in which time they began to heave at uses; for there, after the realm had

had many ages together put in ure the paſſage of uſes by will, they began to argue that an uſe was not deviſeable, but that it did enſue the nature of the land; and the ſame year after, this ſtatute was made; ſo that this opinion ſeemeth ever to be a prelude and forerunner to an act of parliament touching uſes; and if it be ſo meant now, I like it well: but in the mean time the opinion itſelf is to be rejected; and becauſe in the ſame caſe of *Corbet* three reverend judges of the court of common pleas did deliver and publiſh their opinion, though not directly upon the point adjudged, yet *obiter* as one of the reaſons of their judgment, that an uſe of inheritance could not be limited to ceaſe; and again, that the limitation of a new uſe could not be to a ſtranger; ruling uſes merely according to the ground of poſſeſſion; it is worth the labour to examine that learning. By 3 *Hen.* VII. you may collect, that if the feoffees had been diſſeiſed by the common law, and an anceſtor collateral of *ceſtuy que uſe* had releaſed unto the diſſeiſor, and his warranty had attached upon *ceſtuy que uſe*; yet the chancellor upon this matter ſhewed, would have no reſpect unto it, to compel the feoffees to execute the eſtate unto the diſſeiſor: for there the caſe being, that *ceſtuy que uſe* in tail having made an aſſurance by fine and recovery, and by warranty which deſcended upon his iſſue, two of the judges held, that the uſe is not extinct; and *Bryan* and *Huſſey* that held the contrary, ſaid, that the common law is altered by the new ſtatute; whereby they admit, that by the common law that warranty will not bind and extinct a right of a uſe, as it will do a right of poſſeſſion; and the reaſon is, becauſe the law of collateral warranty is a hard law, and not to be conſidered in a court of conſcience. In 5 *Edw.* IV. it is ſaid, that if *ceſtuy que uſe* be attainted, *quaere*, who ſhall have the land, for the lord ſhall not have the land, ſo as there the uſe doth not limitate the poſſeſſion; and the reaſon is, becauſe the lord hath a rent by title; for that is nothing to the *Subpoena*, becauſe the feoffees intent was never to advance the lord, but only his own blood; and therefore the *quaere* of the book ariſeth what the truſt and confidence of the feoffee did tye him to do, as whether he would not ſell the land to the uſe of the feoffee's will, or *in pios uſus?* So favourably they took the intent in thoſe days, as you find in 27 *Hen.* VI. that if a man had appointed his uſe to one for life, the remainder in fee to another, and *ceſtuy que uſe* for life had refuſed, becauſe the intent appeared not to advance the heir at all, nor him in reverſion, preſently the feoffee ſhould have the eſtate for life of him that refuſed, ſome ways to the behoof of the feoffor. But to proceed in ſome better order towards the diſproof of this opinion of limitation, there be four points wherein we will examine the nature of uſes.

1. THE raiſing of them.
2. THE preſerving of them.
3. THE transferring of them.
4. THE extinguiſhing of them.

1. IN all theſe four, you ſhall ſee apparently that uſes ſtand upon their own reaſons, utterly differing from caſes of poſſeſſion. I would have one caſe ſhewed by men learned in the law, where there is a deed; and yet there needs a conſideration: as for paroll, the law adjudgeth it too light to give action without conſideration; but a deed ever in law imports a conſideration, becauſe of the deliberation and ceremony in the confection of it: and therefore in 8 *Reginae* it is ſolemnly argued, that a deed ſhould raiſe an uſe without any other conſideration. In the Queen's caſe a falſe conſideration, if it be of record, will hurt the patent, but want of conſideration doth never hurt it;

it; yet they ſay that a uſe is but a nimble and light thing, and now contrariwiſe it ſeemeth to be weightier than any thing elſe: for you cannot weigh it up to raiſe it, neither by deed, nor deed inrolled, without the weight of a conſideration; but you ſhall never find a reaſon of this to the world's end, in the law: But it is a reaſon of chancery, and it is this;

That no court of conſcience will enforce *donum gratuitum*, though the intent appear never ſo clearly, where it is not executed, or ſufficiently paſſed by law; but if money had been paid, and ſo a perſon damnified, or that it was for the eſtabliſhment of his houſe, then it is a good matter in the chancery: ſo again I would ſee in the law, a caſe where a man ſhall take by a conveyance, be it by deed, livery, or word, that is not party to the grant: I do not ſay that the delivery muſt be to him that takes by the deed, for a deed may be delivery to one man to the uſe of another. Neither do I ſay that he muſt be party to the delivery of the deed, for he in the remainder may take though he be not party; but he muſt be party to the words of the grant: here again the caſe of the uſe goeth ſingle, and the reaſon is, becauſe a conveyance in uſe is nothing but a publication of the truſt; and therefore ſo as the party truſted be declared, it is not material to whom the publication be. So much for the raiſing of uſes. Now as to the preſerving of them.

2. There is no caſe in the common law, wherein notice ſimply and nakedly is material to make a covin, or *particeps criminis*; and therefore if the heir which is in by deſcent, infeoff one which had notice of the diſſeiſin, if he were not a *diſſeiſor de facto*, it is nothing: ſo in 33 *H.* VI. if a feoffment be made upon colluſion, and feoffee makes a feoffment over upon good conſideration, the colluſion is diſcharged, and it is not material if they had notice or no. So as it is put in 14 *H.* VIII. if a ſale be made in a market overt upon good conſideration, although it be to one that hath notice that they are ſtolen goods, yet the property of a ſtranger is bound; though in the book before remembred 33 *H.* VI. ſome opine to the contrary, which is clearly no law; ſo in 31 *E.* III. if aſſets deſcend to the heir, and he alien it upon good conſideration, although it be to one that had notice of the debt, or of the warranty, it is good enough. So 25 *Aſſ.* p. 1. if a man enter of purpoſe into my lands, to the end that a ſtranger which hath right, ſhould bring his *praecipe* and evict the land, I may enter notwithſtanding any ſuch recovery; but if he enter, having notice that the ſtranger hath right, and the ſtranger likewiſe having notice of his entry, yet if it were not upon confederacy or colluſion between them, it is nothing; and the reaſon of theſe caſes is, becauſe the common law looketh no farther than to ſee whether the act were merely *actus fictus in fraudem legis*; and therefore whereſoever it findeth conſideration given, it diſchargeth the covin.

But come now to the caſe of uſe, and there it is otherwiſe, as it is in 14 *H.* VIII. and 28 *H.* VIII. and divers other books; which prove that if the feoffee ſell the land for good conſideration to one that hath notice, the purchaſer ſhall ſtand ſeiſed to the antient uſe; and the reaſon is becauſe the chancery looketh farther than the common law, *viz.* to the corrupt conſcience of him that will deal in the land, knowing it in equity to be another's; and therefore if there were *radix amaritudinis*, the conſideration purgeth it not, but it is at the peril of him that giveth it: ſo that conſideration, or no conſideration is an iſſue at the common law, but notice or no notice is an iſſue in the chancery, and ſo much for the preſerving of uſes.

3. For the transferring of uſes there is no caſe in law whereby an action is transferred, but the *Subpoena* in caſe of uſe was always aſſignable; nay farther,

you

you find twice 27 *H.* VIII. *Fol.* 10. *Pla.* 9. and *Fol.* 30. *Pla.* 21. that a right of uſe may be transferred: for in the former caſe *Montague* maketh the objection and ſaith, that a right of uſe cannot be given by fine, but to him that hath the poſſeſſion; *Fitz-Herbert* anſwereth, yes, well enough; *quaere* the reaſon, ſaith the book.

And in the latter caſe, where *ceſtuy que uſe* was infeoffed by the diſſeiſor of the feoffee, and made a feoffment over, *Engleſield* doubted whether the ſecond feoffee ſhould have the uſe. *Fitz-Herbert* ſaid, I marvel you will make a doubt of it, for there is no doubt but the uſe paſſeth by the feoffment to the ſtranger, and therefore this queſtion needeth not to have been made. So the great difficulty in 10 *Reginae*, *Delamer*'s caſe, where the caſe was in effect tenant in tail of an uſe, the remainder in fee; tenant in tail made a feoffment in fee; tenant, by the ſtatute of 1 *R.* III. and the feoffee infeoffed him in the remainder of the uſe, who made it over; and there queſtion being made whether the ſecond feoffee ſhould have the uſe in remainder, it is ſaid that the ſecond feoffee muſt needs have the beſt right in conſcience; becauſe the firſt feoffee claimed nothing but in truſt, and the *ceſtuy que uſe* cannot claim it againſt his ſale; but the reaſon is apparent, (as was touched before) that a uſe in *eſſe* was but a thing in action, or in ſuit to be brought in court of conſcience, and where the *ſubpoena* was to be brought againſt the feoffee in poſſeſſion to execute the eſtate, or againſt the feoffee out of poſſeſſion to recontinue the eſtate, always the *ſubpoena* might be transferred; for ſtill the action at the common law was not ſtir'd, but remained in the feoffee; and ſo no miſchief of maintenance or transferring rights.

And if a uſe being but a right may be aſſigned, and paſs'd over to a ſtranger, *a multo fortiori*, it may be limited to a ſtranger upon the privity of the firſt conveyance, as ſhall be handled in another place: and as to what *Glanvile*, juſtice, ſaid, he could never find by any book, or evidence of antiquity, a contingent uſe limited over to a ſtranger; I anſwer, firſt, it is no marvel that you find no caſe before *E.* IV. his time, of contingent uſes, where there be not ſix of uſes in all; and the reaſon I doubt was, men did chooſe well whom they truſted, and truſt was well obſerved: and at this day in *Ireland*, where uſes be in practice, caſes of uſes come ſeldom in queſtion, except it be ſometimes upon the alienations of tenants in tail by fine, that the feoffees will not be brought to execute eſtates, to the diſ-inheritance of antient blood. But for experience in the conveyance, there was nothing more uſual in *Obits*, than to will the uſe of the land to certain perſons and their heirs, ſo long as they ſhall pay the chantry prieſts their wages, and in default of payment to limit the uſe over to other perſons and their heirs; and ſo in caſe of forfeiture, through many degrees; and ſuch conveyances are as ancient as *R.* II. his time.

4. Now for determining and extinguiſhing of uſes, I put the caſe of collateral warranty before, and to that the notable caſe of 14 *H.* VIII. *Halfpenny*'s caſe, where this very point was as in the principal caſe; for a right out of land, and the land itſelf in caſe of poſſeſſion, cannot ſtand together, but the rent ſhall be extinct; but there the caſe is, that the uſe of the land, and the uſe of the rent ſhall ſtand well enough together; for a rent charge was granted by the feoffee to one, that had notice of the uſe, and ruled, that the rent was to the ancient uſe, and both uſes were *in eſſe ſimul & ſemel:* and though *Brudenell* Chief Juſtice urged the ground of poſſeſſion to be otherwiſe, yet he was over-ruled by the other three juſtices, and *Brooke* ſaid unto him, he thought he argued much for his pleaſure. And to conclude, we ſee that things may be avoided and determined by the ceremonies and acts, like unto thoſe by which they are created and raiſed; that which paſſeth by livery ought to be

avoided

avoided by entry; that which paſſeth by grant, by claim; that which paſſeth by way of charge, determineth by way of diſcharge: and ſo a uſe which is raiſed but by a declaration or limitation, may ceaſe by words of declaration or limitation, as the civil law ſaith, *in his nil magis conſentaneum eſt, quam ut iiſdem modis res diſſolvantur quibus conſtituantur.*

FOR the inception and progreſſion of uſes, I have for a precedent in them ſearched other laws, becauſe ſtates and common-wealths have common accidents; and I find in the civil law, that that which cometh neareſt in name to the uſe, is nothing like in matter, which is *uſus fructus:* for *uſus fructus & dominium* is with them, as with us particular tenancy and inheritance. But that which reſembleth the uſe moſt is *fidei-commiſſum*, and therefore you ſhall find in *Juſtinian lib.* 2. Inſt l. 2. Tit. 2. that they had a form in teſtaments, to give inheritance to one to the uſe of another, *Haeredem conſtituo Caium, rogo autem te, Caie, ut haereditatem reſtituas Seio.* And the text of the civilians ſaith, that for a great time if the heir did not, as he was required, *ceſtuy que uſe* had no remedy at all, until about the time of *Auguſtus Caeſar* there grew in cuſtom a flattering form of truſt, for they penned it thus: *Rogo te per ſalutem Auguſti*, or *per fortunam Auguſti &c.* Whereupon *Auguſtus* took the breach of truſt to ſound in derogation of himſelf, and made a Reſcript to the *praetor* to give remedy in ſuch caſes; whereupon within the ſpace of a hundred years, theſe truſts did ſpring and ſpeed ſo faſt, as they were forced to have a particular chancellor only for uſes, who was called *praetor fidei commiſſarius*; and not long after the inconvenience of them being found, they reſorted unto a remedy much like unto this ſtatute; for by two decrees of ſenate, called *ſenatus-conſultum Trebellianum & Pegaſianum*, they made *ceſtuy que uſe* to be heir in ſubſtance. I have ſought likewiſe, whether there be any thing which maketh with them in our law, and I find that *Periam* chief baron in the argument of *Chudleigh's* caſe compareth them to copyholders, and aptly for many reſpects.

FIRST, becauſe as an uſe ſeemeth to be an hereditament in the court of chancery, ſo the copy-hold ſeemeth to be an hereditament in the Lords court.

SECONDLY, this conceit of limitation hath been troubleſome in copy-holders as well as in uſes; for it hath been of late days queſtioned, whether there ſhould be dowers, tenancies by the courteſy, intails, diſcontinuances, and recoveries of copyholds, in the nature of inheritances at the common law; and ſtill the judgments have weighed, that you muſt have particular cuſtoms in copyholds, as well as particular reaſons of conſcience in uſe, and the limitation rejected.

AND thirdly, becauſe they both grew to ſtrength and credit by degrees: for the copy-holder firſt had no remedy at all againſt the lord, and were as tenancy at will. Afterwards it grew to have remedy in chancery, and afterwards againſt their lords by treſpaſs at the common law; and now laſtly the law is taken by ſome, that they have remedy by *ejectione firmæ*, without a ſpecial cuſtom of leaſing. So no doubt in uſes: At the firſt the chancery made queſtion to give remedy, until uſes grew more general, and the chancery more eminent; and then they grew to have remedy in conſcience: but they could never obtain any manner of remedy at the common law, neither againſt the feoffee, nor againſt ſtrangers; but the remedy againſt the feoffee was left to the *ſubpoena*; and the remedy againſt ſtrangers to the feoffee.

NOW for the caſes whereupon uſes were put in practice, *Coke* in his reading doth ſay well, that they were produced ſometimes for fear, and many times for fraud. But I hold that neither of theſe caſes were ſo much the reaſons of uſes, as another reaſon in the beginning, which was, that lands by the common law of *England* were not teſtamentary, or deviſeable; and of late

late years ſince the ſtatute, the caſe of the conveyance for ſparing of purchaſes, and execution of eſtates; and now laſt of all an exceſs of evil in mens minds, affecting to have the aſſurance of their eſtate and poſſeſſion to be revocable in their own times, and irrevocable after their own times.

Now for the commencement and proceeding of them, I have conſidered what it hath been in courſe of common law, and what it hath been in courſe of ſtatute. For the common law the conceit of *Shelley* in 24 *H.* 8. and of *Pollard* in 27 *H.* 8. ſeemeth to me to be without ground, which was that the uſe ſucceeded the tenure: for after that the ſtatute of *Quia emptores terrarum*, which was made 18 *E.* I. had taken away the tenure between the feoffor and the feoffee, and left it to the lord *Paramount*; they ſaid that the feoffment being then merely without conſideration, ſhould therefore intend an uſe to the feoffor, which cannot be; for by that reaſon, if the feoffment before the ſtatute had been made *tenendum de capitalibus dominis*, as it muſt be, there ſhould have been an uſe unto the feoffor before that ſtatute. And again, if a grant had been made of ſuch things as conſiſt not in tenure, as advowſons, rents, villains, and the like, there ſhould have been a uſe of them, wherein the law was quite contrary; for after the time that uſes grew common, it was nevertheleſs a great doubt whether things that did lie in grant, did not carry a conſideration in themſelves becauſe of the deed.

And therefore I do judge that the intendment of a uſe to the feoffor, where the feoffment was made without conſideration, grew long after, when uſes waxed general; and for this reaſon, becauſe when feoffments were made, and that it reſted doubtful whether it were in uſe or in purchaſe, becauſe purchaſes were things notorious, and uſes were things ſecret, the Chancellor thought it more convenient to put the purchaſer to prove his conſideration, than the feoffor and his heirs to prove the truſt; and ſo made the intendment towards the uſe, and put the proof upon the purchaſer.

And therefore as uſes were at the common law in reaſon, for whatſoever is not by ſtatute, nor againſt law, may be ſaid to be at the common law; and both the general truſt and the ſpecial, were things not prohibited by the law, though they were not remedied by the law; ſo the experience and practice of uſes were not ancient; and my reaſons why I think ſo, are theſe.

First, I cannot find in any evidence before King *R.* II. his time, the clauſe *ad opus & uſum*, and the very latin of it ſavoureth of that time; for in ancient time, about *Edw.* I. his time, and before, when lawyers were part civilians, the latin phraſe was much purer, as you may ſee by *Bracton*'s writing, and by antient patents and deeds, and chiefly by the regiſter of writs, which is good latin; wherein this phraſe (*ad opus & uſum*) and the words (*ad opus*) is a barbarous phraſe, and like enough to be the penning of ſome chaplain that was not much paſt his grammar, where he had found *opus & uſus* coupled together, and that they did govern an ablative caſe; as they do indeed ſince this ſtatute, for they take away the land and put them into a conveyance.

Secondly, I find in no private act of attainder, the clauſe of forfeiture of lands, the words, which he hath in poſſeſſion or in uſe, until *Ed.* IV's reign.

Thirdly, I find the word (*uſe*) in no ſtatute until 7 *Rich.* II. *cap.* 11. of proviſors, and in 15 *Rich.* of *Mortmain*.

Fourthly, I collect out of *Choke*'s ſpeech in 8. *Edw.* IV. where he ſaith, that by the advice of all the judges, it was thought that the *ſubpoena* did not lie againſt the heir of the feoffee which was in by law, but *ceſtuy que uſe* was driven to his bill in parliament, that uſes even in that time were but in their infancy; for no doubt but at the firſt the chancery made difficulty to give

remedy at all, and did leave it to the particular conſcience of the feoffee: but after the chancery grew abſolute, as may appear by the ſtatute of 13 *H.* VI. that complainants in chancery ſhould enter into bond to prove their ſuggeſtions, which ſheweth that the chancery at that time began to embrace too far, and was uſed for vexation; yet nevertheleſs it made ſcruple to give remedy againſt the heir being in by act in law though he were privy; ſo that it cannot be that uſes had been of any great continuance when they made that a queſtion: as for the caſe of *matrimonii praelocuti*, it hath no affinity with uſes; for whereſoever there was remedy at the common law by action, it cannot be intended to be of the nature of a uſe.

And for the book commonly vouched of 8 *Aſſ.* where *Earl* calleth the poſſeſſion of a conuzee upon a fine levied by conſent an entry in *autre droit*, and 44 of *E.* III. where there is mention of the feoffors that ſued by petition to the King, they be but implications of no moment. So as it appeareth the firſt practice of uſes was about *Richard* II. his time; and the great multiplying and overſpreading of them was partly during the wars in *France*, which drew moſt of the nobility to be abſent from their poſſeſſions; and partly during the time of the trouble and civil war between the two houſes about the title of the crown.

Now to conclude the progreſſion of uſes in courſe of ſtatutes, I do note three ſpecial points.

1. That a uſe had never any force at all, at the common law, but by ſtatute law.

2. That there was never any ſtatute made directly for the benefit of *ceſtuy que uſe*, as that the deſcent of an uſe ſhould toll an entry, or that a releaſe ſhould be good to the pernor of the profits, or the like; but always for the benefit of ſtrangers and other perſons againſt *ceſtuy que uſe*, and his feoffees: for though by the ſtatute of *Richard* III. he might alter his feoffees, yet that was not the ſcope of the ſtatute, but to make good his aſſurance to other perſons, and the other came in *ex obliquo*.

3. That the ſpecial intent unlawful and covinous was the original of uſes, though after it induced to the lawful intent general and ſpecial; for 30 *Edward* III. is the firſt ſtatute I find, wherein mention is made of the taking of profits by one, where the eſtate in law is in another.

For as to the opinion in 27 *Hen.* VIII. that in caſe of the ſtatute of *Marlebridge*, the feoffees took the profits, it is but a conceit; for the law is this day, that if a man infeoff his eldeſt ſon within age, and without conſideration, although the profits be taken to the uſe of the ſon, yet it is a feoffment within the ſtatute. And for the ſtatute *de religioſis* 7 *Edward* I. which prohibits generally that religious perſons ſhould not purchaſe *arte vel ingenio*, yet it maketh no mention of a uſe, but it ſaith *colore donationis termini vel alicujus tituli*, reciting there three forms of conveyances, the gift, the long leaſe, and feigned recovery; which gift cannot be underſtood of a gift to a ſtranger to their uſe, for that came to be holpen by 15 *Richard* II. long after.

But to proceed, in 5 *Edward* III. a ſtatute was made for the relief of creditors againſt ſuch as made covinous gifts of their lands and goods, and conveyed their bodies into ſanctuaries, there living high upon others goods; and therefore that ſtatute made their lands liable to their creditors executions in that particular caſe, if they took the profits. In 1 *Richard* II. a ſtatute was made for relief of thoſe as had right of action, againſt thoſe as had removed the tenancy of the *praecipe* from them, ſometimes by infeoffing great perſons, for maintenance, and ſometimes by ſecret feoffments to others, whereof

whereof the defendants could have no notice; and therefore the ſtatute maketh the recovery good in all actions againſt the firſt feoffors as they took the profits, and ſo as the defendants bring their action within a year of their expulſion. In 2 *Richard* II. *cap.* 3. *Seſſion.* 2. an imperfection of the ſtatute of 50 *Edward* III. was holpen; for whereas the ſtatute took no place, but where the defendant appeared, and ſo was fruſtrated, the ſtatute giveth upon proclamation made at the gate of the place privileged, that the land ſhould be liable without appearance.

In 7 *R.* II. a ſtatute was made for the reſtraint of aliens, to take any benefices, or dignities eccleſiaſtical, or farms, or adminiſtration to them, without the King's ſpecial licence, upon pain of the ſtatute of proviſors: which being remedied by a former ſtatute, where the alien took it to his own uſe; it is by that ſtatute remedied, where the alien took it to the uſe of another, as it is ſaid in the book; though I gueſs, that if the record were ſearched, it ſhould be, if any other purchaſed to the uſe of an alien, and that the words (or to the uſe of another) ſhould be (or any other to his uſe.) In 15 *Rich.* II. *cap.* 5. a ſtatute was made for the relief of lords againſt *Mortmain*, where feoffments were made to the uſe of corporations, and an ordinance made that for feoffments paſt, the feoffees ſhould before a day, either purchaſe licence to amortiſe them, or alien them to ſome other uſe, or other feoffments to come, or they ſhould be within the ſtatute of *Mortmain*. In 4 *Hen.* IV. *cap.* 7. the ſtatute of 1 *Richard* II. is enlarged in the limitation of time; for whereas the ſtatute did limit the action to be brought within the year of the feoffment, this ſtatute in caſe of a diſſeiſin extends the time to the life of the diſſeiſor; and in all other actions, leaves it to the year from the time of the action grown. In 11 *Henry* VI. *cap.* 3. that ſtatute of 4 *Henry* IV. is declared, becauſe the conceit was upon the ſtatute, that in caſe of diſſeiſin the limitation of the life of the diſſeiſor went only to the aſſiſe of *novel diſſeiſin*, and to no other action; and therefore that ſtatute declareth the former law to extend to all other actions, grounded upon *novel diſſeiſin*. In 11 *Henry* VI. *cap.* 5. a ſtatute was made for relief of him in remainder againſt particular tenants, for lives, or years, that aſſigned over their eſtates, and took the profits, and then committed waſte againſt them; therefore this ſtatute giveth an action of waſte, being pernors of the profits. In all this courſe of ſtatutes no relief is given to purchaſers, that come in by the party, but to ſuch as come in by law, as defendants in *praecipes*, whether they be creditors, diſſeiſors, or leſſors, and that only in caſe of *Mortmain*: and note alſo, that they be all in caſes of ſpecial covinous intents, as to defeat executions, tenancy to the *praecipe*, and the ſtatute of *Mortmain*, or proviſors. From 11 *Henry* VI. to 1 *R.* III. being the ſpace of fifty years, there is a ſilence of uſes in the ſtatute book, which was at that time, when, no queſtion, they were favoured moſt. In 1 *Richard* III. *cap.* 1. cometh the great ſtatute for relief of thoſe that come in by the party, and at that time an uſe appeareth in his likeneſs; for there is not a word ſpoken of taking the profits, to deſcribe a uſe by, but of claiming to a uſe; and this ſtatute ordained, that all gifts, feoffments, grants, &c. ſhall be good againſt the feoffors, donors and grantors, and all other perſons claiming only to their uſe; ſo as here the purchaſer was fully relieved, and *ceſtuy que uſe* was *obiter* enabled to change his feoffees; becauſe there were no words in the ſtatute of feoffments, grants, &c. upon good conſideration; but generally in *Henry* VII's time, new ſtatutes were made for further help and remedy to thoſe that came in by act in law; as 1 *Henry* VII. *cap.* 1. a *formedon* is given without limitation of time againſt

ceſtuy

ceſtuy que uſe; and *obiter*, becauſe they make him a tenant, they give him advantage of a tenant, as of age, and voucher: *quaere* 4 *Hen.* VII. 17. the wardſhip is given to the lord of the heir of *ceſtuy que uſe*, dying, and no will declared, is given to the lord, as if he had died ſeiſed in demeſne, and action of waſte given to the heir againſt the guardian, and damages, if the lord were barr'd in his writ of ward; and relief is likewiſe given unto the lord, if the heir holding the knight's-ſervice be of full age. In 19 *Hen.* VII. *cap.* 15. there is relief given in three caſes, firſt to the creditors upon matters of record, as upon recognizance, ſtatute, or judgment, whereof the two former were not aided at all by any ſtatute; and the laſt was aided by a ſtatute of 50 *E.* III. and 2 *R.* II. only in caſe of ſanctuary men. Secondly, to the lords in ſocage for their relief, and herriots upon death, which was omitted in the 4 *Hen.* VII. and laſtly to the lords of villains, upon a purchaſe of their villains in uſe. In 23 *Henry* VIII. *cap.* 10. a further remedy was given in a caſe, like unto the caſe of *Mortmain*; for in the ſtatute of 15 *Richard* II. remedy was given where the uſe came, *ad manum mortuam*, which was when it came to ſome corporation: now when uſes were limited to a thing, act, or work, and to a body, as to the reparation of a church, or an abbot, or to a guild, or fraternities as are only in reputation, but not incorporate: as to pariſhes, or ſuch guilds or fraternities as are only in reputation, but not incorporate, that caſe was omitted, which by this ſtatute is remedied, not by way of giving entry unto the lord, but by way of making the uſe utterly void; neither doth the ſtatute expreſs to whoſe benefit the uſe ſhall be made void, either the feoffor, or feoffee, but leaveth it to law, and addeth a *proviſo*, that uſes may be limited twenty years from the gift, and no longer.

This is the whole courſe of ſtatute law before this ſtatute, touching uſes. Thus have I ſet forth unto you the nature and definition of an uſe, the differences and truſt of an uſe, and the parts and qualities of it; and by what rules and learnings uſes ſhall be guided and ordered: by a precedent of them in our laws, the cauſes of the ſpringing and ſpreading of uſes, the continuance of them, and the proceedings that they have had both in common law and ſtatute law; whereby it may appear, that a uſe is no more but a general truſt, when any one will truſt the conſcience of another better than his own eſtate and poſſeſſion, which is an accident or event of human ſociety, which hath been, and will be in all laws, and therefore was at the common law, which is common reaſon. *Fitz-Herbert* ſaith in the 14 *H.* VIII. common reaſon is common law, and not conſcience; but common reaſon doth define that uſes ſhould be remedied in conſcience, and not in courts of law, and ordered by rules in conſcience, and not by ſtreight rules of law; for the common law hath a kind of a rule and ſurvey over the chancery, to determine what belongs to the chancery. And therefore we may truly conclude, that the force and ſtrength that a uſe had or hath in conſcience, is by common law, and the force that it had or hath by common law is only by ſtatutes.

Now followeth in time and matter, the conſideration of this ſtatute, which is of principal labour; for thoſe former conſiderations which we have handled ſerve but for introduction.

This ſtatute, as it is the ſtatute which of all others hath the greateſt power and operation over the heritages of the realm, ſo howſoever it hath been by the humour of the time perverted in expoſition, yet in itſelf is moſt perfectly and exactly conceived and penned of any law in the book. 'Tis induced with the moſt declaring and perſuading preamble, 'tis conſiſting and ſtanding upon the wiſeſt and fitteſt ordinances, and qualified with the moſt foreſeeing and

and circumſpect ſavings and proviſoes: and laſtly 'tis the beſt ponder'd in all the words and clauſes of it of any ſtatute that I find; but before I come to the ſtatute it ſelf, I will note unto you three matters of circumſtance.

1. The time of the ſtatute: 2. The title of it: 3. The precedent or pattern of it.

For the time of it was in 27 *Hen.* VIII. when the King was in full peace, and a wealthy and flouriſhing eſtate, in which nature of time men are moſt careful of their poſſeſſions; as well becauſe purchaſers are moſt ſtirring: as again, becauſe the purchaſer when he is full, is no leſs careful of his aſſurance to his children, and of diſpoſing that which he hath gotten, than he was of his bargain for the compaſſing thereof.

About that time the realm likewiſe began to be enfranchiſed from the tributes of *Rome*, and the poſſeſſions that had been in *Mortmain* began to ſtir abroad; for this year was the ſuppreſſion of the ſmaller houſes of religion, all tending to plenty, and purchaſing: and this ſtatute came in conſort with divers excellent ſtatutes, made for the kingdom in the ſame parliament; as the reduction of *Wales* to a more civil government, the re-edifying of diverſe cities and towns, the ſuppreſſing of depopulation and incloſures.

For the title, it hath one title in the roll, and another in courſe of pleading. The title in the roll is no ſolemn title, but an act entitled, an act expreſſing an order for uſes and wills; the title in courſe of pleading is, *ſtatutum de uſibus, in poſſeſſionem transferendis:* wherein *Walmſly* juſtice noted well 4° *Reginae*, that if a man look to the working of the ſtatute, he would think that it ſhould be turned the other way, *de poſſeſſionibus ad uſus transferendis*; for that is the courſe of the ſtatute, to bring poſſeſſion to the uſe. But the title is framed not according to the work of the ſtatute, but according to the ſcope and intention of the ſtatute, *nam quod primum eſt in intentione, ultimum eſt in operatione.* The intention of the ſtatute by carrying the poſſeſſion to the uſe, is to turn the uſe to a poſſeſſion; for the words are not *de poſſeſſionibus ad uſus transferendis*; and as the grammarian ſaith, *praepoſitio (ad) denotat notam actionis, ſed praepoſitio (in) cum accuſativo denotat notam alterationis:* and therefore *Kingſmill* juſtice in the ſame caſe ſaith, that the meaning of the ſtatute was, to make a tranſubſtantiation of the uſe into a poſſeſſion. But it is to be noted, that titles of acts of parliament ſeverally came in but in the 5 *Hen.* VIII. for before that time there was but one title of all the acts made in one parliament; and that was no title neither, but a general preface of the good intent of the King, tho' now it is parcel of the record.

For the precedent of this ſtatute upon which it is drawn, I do find by the firſt *Richard* III. whereupon you may ſee the very mould whereon this ſtatute was made, that the ſaid King having been infeoffed (before he uſurped) to uſes, it was ordained that the land whereof he was jointly infeoffed ſhould be as if he had not been named; and where he was ſolely infeoffed, it ſhould be in *ceſtuy que uſe*, in eſtate, as he had the uſe.

Now to come to the ſtatute itſelf, the ſtatute conſiſteth, as other laws do, upon a preamble, the body of the law, and certain ſavings, and proviſoes. The preamble ſetteth forth the inconveniencies, the body of the law giveth the remedy, and the ſavings and proviſoes take away the inconveniences of the remedy. For new laws are like the apothecaries drugs, though they remedy the diſeaſe, yet they trouble the body; and therefore they uſe to correct with ſpices: ſo it is not poſſible to find a remedy for any miſchief in the commonwealth, but it will beget ſome new miſchief; and therefore they ſpice their laws with proviſoes to correct and qualify them.

THE preamble of the law was juſtly commended by *Popham* chief juſtice in 36 *Reginae*, where he ſaith, that there is little need to ſearch and collect out of caſes, before this ſtatute, what the miſchief was which the ſcope of the ſtatute was to redreſs; becauſe there is a ſhorter way offered us, by the ſufficiency and fulneſs of the preamble, and therefore it is good to conſider it, and ponder it throughly.

THE preamble hath three parts.

FIRST a recital of the principal inconveniencies, which is the root of all the reſt.

SECONDLY, an enumeration of diverſe particular inconveniencies, as branches of the former.

THIRDLY, a taſte or brief note of the remedy that the ſtatute meaneth to apply. The principal inconvenience, which is *radix omnium malorum*, is the diverting from the grounds and principles of the common law, by inventing a mean to transfer lands and inheritances without any ſolemnity, or act notorious: ſo as the whole ſtatute is to be expounded ſtrongly towards the extinguiſhment of all conveyances, whereby the freehold or inheritance may paſs without any new confections of deeds, executions of eſtate or entries, except it be where the eſtate is of privity and dependance one towards the other; in which caſes, *mutatis mutandis*, they might paſs by the rules of the common law.

THE particular inconveniencies by the law rehearſed may be reduced into four heads.

1. FIRST, that theſe conveyances in uſe are weak for conſideration.

2. SECONDLY, that they are obſcure and doubtful for trial.

3. THIRDLY, that they are dangerous for want of notice and publication.

4. FOURTHLY, that they are exempted from all ſuch titles as the law ſubjecteth poſſeſſions unto.

THE firſt inconvenience lighteth upon heirs.

THE ſecond upon jurors and witneſſes.

THE third upon purchaſers.

THE fourth upon ſuch as come in by gift in law.

ALL which are perſons that the law doth principally reſpect and favour.

FOR the firſt of theſe are three impediments (to the judgment of man) in diſpoſing juſtly and adviſedly of his eſtate.

FIRST, trouble of mind.

SECONDLY, want of time.

THIRDLY, of wiſe and faithful counſel about him.

1. AND all theſe three the ſtatute did find to be in the diſpoſition of an uſe by will, whereof followed the unjuſt diſinheriſon of heirs. Now the favour of law unto heirs appeareth in many parts of the law; as the law of deſcent privilegeth the poſſeſſion of the heir, againſt the entry of him that hath right by the law: no man ſhall warrant againſt his heir, except he warrant againſt himſelf, and diverſe other caſes too long to ſtand upon: and we ſee the antient law in *Glanvill*'s time was, that the anceſtor could not diſinherit his heir by grant, or other act executed in time of ſickneſs; neither could he alien land which had deſcended unto him, except it were for conſideration of money or ſervice, but not to advance any younger brother without the conſent of the heir.

2. FOR trials, no law ever took a ſtraiter courſe that evidence ſhould not be perplexed, nor juries inveigled, than the common law of *England*; as on the other

other ſide, never law took a more preciſe and ſtrait courſe with juries, that they ſhould give a direct verdict. For whereas in a manner all laws do give the tryers, or jurors (which in other laws are called judges *de facto*) a liberty to give *non liquet*, that is, to give no verdict at all, and ſo the caſe to ſtand abated; our law enforceth them to a direct verdict, general or ſpecial; and whereas other laws accept of plurality of voices to make a verdict, our law enforceth them all to agree in one; and whereas other laws leave them to their own time and eaſe, and to part, and to meet again; our law doth dureſs and impriſon them in the hardeſt manner, without light or comfort, until they be agreed, in conſideration of ſtraitneſs and coercion: it is conſonant, that the law do require in all matters brought to iſſue, that there be full proof and evidence; and therefore if the matter in itſelf be of that furety as in ſimple contracts, which are made by parol, without writing, it alloweth wager of law.

In iſſue upon the mere right (which is a thing hardly to diſcern) it alloweth wager of battail to ſpare jurors, if time have wore out the marks and badges of truth: from time to time there have been ſtatutes of limitation, where you ſhall find this miſchief of perjuries often recited; and laſtly, which is the matter in hand, all inheritances could not paſs but by acts overt and notorious, as by deeds, livery, and records.

3. For purchaſers (*bona fide*) it may appear that they were ever favoured in our law, as firſt by the great favour of warranties which were ever for the help of purchaſers: as where by the law in *Edw.* III's time, the diſſeiſee could not enter upon the feoffee in regard of the warranty; ſo again the collateral garranty, which otherwiſe as a hard law, grew in doubt only upon favour of purchaſers; ſo was the binding of fines at the common law, the invention and practice of recoveries, to defeat the ſtatute of intails, and many more grounds and learnings are to be found, which reſpect to the quiet of the poſſeſſion of purchaſers. And therefore though the ſtatute of 1 *Rich.* III. had provided for the purchaſer in ſome ſort, by enabling the acts and conveyances of *ceſtuy que uſe*; yet nevertheleſs, the ſtatute did not at all diſable the acts or charges of the feoffees; and ſo as *Walmſly* juſtice ſaid 42 *Reginae*, they played at double hand, for *ceſtuy que uſe* might ſell, and the feoffee might ſell, which was a very great uncertainty to the purchaſer.

4. For the fourth inconvenience towards thoſe that come in by law; conveyances in uſes were like privileged places or liberties; for as there the law doth not run, ſo upon ſuch conveyances the law could take no hold, but they were exempted from all titles in law. No man is ſo abſolute owner of his poſſeſſions, but that the wiſdom of the law doth reſerve certain titles unto others; and ſuch perſons come not in by the pleaſure and diſpoſition of the party, but by the juſtice and conſideration of law, and therefore of all others they are moſt favour'd: and alſo they are principally three.

1. The King and lords who loſt the benefit of attainders, fines for alienations, eſcheats, aids, herriots, reliefs, *&c.*

2. The defendants in *praecipes* either real or perſonal, for debt and damages, who loſt the benefit of their recoveries and executions.

3. Tenants in dower, and by the courteſy, who loſt their eſtates and tithes.

1. First for the King: no law doth endow the King or Sovereign with more prerogatives or privileges: for his perſon is privileged from ſuits and actions, his poſſeſſions from interruption and diſturbance, his right from limitation of time, his patents and gifts from all deceits and falſe ſuggeſtions. Next the King is the lord, whoſe duties and rights the law doth much favour, becauſe the law ſuppoſeth the land did originally

come

come from him; for until the ſtatute of *Quia emptores terrarum*, the lord was not forced to deſtruct or diſmember his ſigniory or ſervice. So until 15 *H.* VII. the law was taken, that the lord, upon his title of wardſhip, ſhould put out a conuzee of a ſtatute, or a termor; ſo again we ſee, that the ſtatute of *Mortmain* was made to preſerve the lord's eſcheats and wards; the tenant in dower is ſo much favoured, as that it is the common by-word in the law, that the law favoureth three things.

1. Life. 2. Liberty. 3. Dower.

So in caſe of voucher, the feme ſhall not be delayed, but ſhall recover againſt the heir incontinent; ſo likewiſe of tenant by courteſy it is called tenancy by the law of *England*, and therefore ſpecially favoured, as a proper conceit and invention of our law; ſo as again the law doth favour ſuch as have antient rights, and therefore it telleth us it is commonly ſaid that a right cannot die: and that ground of law, that a freehold cannot be in ſuſpenſe, ſheweth it well, inſomuch that the law will rather give the land to the firſt comer, which we call an occupant, than want a tenant to a demandant's action.

And again the other antient ground of law of *remitter*, ſheweth that where the tenant faileth without folly in the defendant, the law executeth the antient right. To conclude therefore this point, when this practice of feoffments to uſe did prejudice and damnify all thoſe perſons that the antient common law favour'd; and did abſolutely croſs the wiſdom of the law: to have conveyances conſiderate and not odious, and to have trial thereupon clear and not inveigled, it is no marvel that the ſtatute concludeth, that their ſubtle imaginations and abuſes, tended to the utter ſubverſion of the antient common laws of this realm.

The third part of the preamble giveth a touch of the remedy which the ſtatute intendeth to miniſter, conſiſting in two parts.

First, the extirpation of feoffments.

Secondly, the taking away of the hurt, damage and deceit of the uſes, out of which have been gathered two extremities of opinions.

The firſt opinion is, that the intention of the ſtatute was to diſcontinue and baniſh all conveyances in uſe; grounding themſelves upon the words, that the ſtatute doth not ſpeak of the extinguiſhment or extirpation of the uſe, *viz.* by an unity of poſſeſſion, but of an extinguiſhment or extirpation of the feoffment, *&c.* which is the conveyance itſelf.

Secondly, out of the words (abuſe and errors, heretofore uſed and accuſtomed) as if uſes had not been at the common law, but had been only an erroneous device or practice.

To both which I anſwer.

To the former, that the extirpation which the ſtatute meant was plain, to be of the feoffee's eſtate, and not to form of conveyances.

To the latter I ſay, that for the word (abuſe) that may be an abuſe of the law, which is not againſt law, as the taking long leaſes at this day of land *in capite* to defraud wardſhips, is an abuſe of the law, which is not againſt law, but wandring or going aſtray, or digreſſing from the ancient practice of the law, and by the word (errors) the ſtatute meant by it, not a miſtaking of the law, into a by-courſe: as when we ſay (*erravimus cum patribus juris*) it is not meant of ignorance only, but of perverſity. But to prove that the ſtatute meant not to ſuppreſs the form of conveyances, there be three reaſons which are not anſwerable.

The firſt is, that the ſtatute in the very branch thereof hath words, *de futuro* (that are ſeiſed, or hereafter ſhall be ſeiſed:) and whereas it may be

ſaid that theſe words were put in, in regard of uſes ſuſpended by diſſeiſins, and ſo no preſent ſeiſin to the uſe, until a regreſs of the feoffees; that intendment is very particular, for commonly ſuch caſes are brought in by proviſoes, or ſpecial branches, and not intermixed in the body of a ſtatute; and it had been eaſy for the ſtatute to have ſaid, or hereafter ſhall be ſeiſed upon any feoffment, *&c.* heretofore had or made.

THE ſecond reaſon is upon the words of the ſtatute of inrolments, which ſaith, that no hereditaments ſhall paſs, *&c.* or any uſe thereof, *&c.* whereby it is manifeſt, that the ſtatute meant to leave the form of conveyance with the addition of a farther ceremony.

THE third reaſon I make is out of the words of the proviſo, where it is ſaid, that no primer ſeiſin, livery, no fine, nor alienation, ſhall be taken for any eſtate executed by force of the ſtatute of 27, before the firſt of *May* 1536, but they ſhall be paid for uſes made and executed in poſſeſſion for the time after; where the word (made) directly goeth to conveyances in uſe made after the ſtatute, and can have no other underſtanding; for the words (executed in poſſeſſion) would have ſerved for the caſe of regreſs: and laſtly, which is more than all, if they have had any ſuch intent, the caſe being ſo general and ſo plain, they would have had words expreſs, that every limitation of uſe made after the ſtatute ſhould have been void; and this was the expoſition, as tradition goeth, that a reader of *Grays-Inn*, which read ſoon after the ſtatute, was in trouble for, and worthily, who, as I ſuppoſe, was *Boy*, whoſe reading I could never ſee; but I do now inſiſt upon it, becauſe now again ſome in an immoderate invective againſt uſes, do relapſe to the ſame opinion.

THE ſecond opinion which I called a contrary extremity is, that the ſtatute meant only to remedy the miſchiefs in the preamble, recited as they grew by reaſon of divided uſes; and although the like miſchief may grow upon the contingent uſes, yet the ſtatute had no foreſight of them at that time, and ſo it was merely a new caſe not compriſed. Whereunto I anſwer, that it is the work of the ſtatute to execute the divided uſe; and therefore to make an uſe void by this ſtatute which was good before, though it doth participate of the miſchief recited in the ſtatute, were to make a law upon a preamble without a purview, which were groſly abſurd. But upon the queſtion what uſes are executed, and what not; and whether out of poſſeſſions of a diſſeiſor, or other poſſeſſions out of privity or not, there you ſhall guide your expoſition according to the preamble; as ſhall be handled in my next day's diſcourſe, and ſo much touching the preamble of this law.

FOR the body of the law, I would wiſh all readers that expound ſtatutes to do as ſcholars are willed to do: that is, firſt to ſeek out the principal verb; that is, to note and ſingle out the material words whereupon the ſtatute is framed; for there are in every ſtatute certain words, which are as veins where the life and blood of the ſtatute cometh, and where all doubts do ariſe, and the reſt are *literae mortuae* fulfilling words.

THE body of the ſtatute conſiſteth upon two parts.

FIRST, a ſuppoſition or caſe put, as *Anderſon* 36 *Reginae* calleth it.

SECONDLY, a purview or ordinance thereupon.

THE caſes of the ſtatute are three, and every one hath his purview.

THE general caſe.

THE caſe of co-feoffees to the uſe of ſome of them.

AND the general caſe of feoffees to the uſe or perſons of rents or profits.

THE general caſe is built upon eight material words.

FOUR on the part of the feoffees.

THREE on the part of *ceſtuy que uſe*, and one common to them both.

THE firſt material word on the part of the feoffees is the word (perſon.) This excludes all alliances; for there can be no truſt repos'd but in a perſon certain: it excludes again all corporations; for they are equalled to a uſe certain: for note on the part of the feoffor-over the ſtatute inſiſts upon the word (perſon,) and on the part of *ceſtuy que uſe*, that added body politique.

THE ſecond word material, is the word (ſeiſed:) this excludes chattels. The reaſon is, that the ſtatute meant to remit the common law, and not but that the chattels might ever paſs by teſtament or by parol; therefore the uſe did not pervert them. It excludes rights, for it is againſt the rules of the common law to grant, or transfer rights; and therefore the ſtatute would execute them.

THIRDLY, it excludes contingent uſes, becauſe the ſeiſin cannot be but to a fee-ſimple of a uſe; and when that is limited, the ſeiſin of the feoffee is ſpent; for *Littleton* tells us, that there are but two ſeiſins, one *in Dominio ut de feodo*, the other *ut de feodo & jure*; and the feoffee by the common law could execute but the fee-ſimple to uſes preſent, and not poſt uſes; and therefore the ſtatute meant not to execute them.

THE third material word is (hereafter) that bringeth in again conveyances made after the ſtatute; it brings in again conveyances made before, and diſturb'd by deſſeiſin, and recontinued after; for it is not ſaid infeoffed to uſe hereafter ſeis'd.

THE fourth word is (hereditament) which is to be underſtood of thoſe things whereof an inheritance is in *eſſe:* for if I grant a rent charge *de novo* for life to a uſe, this is good enough; yet there is no inheritance in being of this rent: this word likewiſe excludes annuities and uſes themſelves; ſo that a uſe cannot be to a uſe.

THE firſt word on the part of *ceſtuy que uſe*, is the word (uſe, confidence or truſt) whereby it is plain that the ſtatute meant to remedy the matter, and not words; and in all the clauſes it ſtill carrieth the words.

THE ſecond word is the word (perſon) again, which excludeth all alliances; it excludeth alſo all contingent uſes which are not to bodies, lively and natural, as the building of a church, the making of a bridge; but here (as noted before) it is ever coupled with body politick.

THE third word is the word (other;) for the ſtatute meant not to croſs the common law. Now at this time uſes were grown to ſuch a familiarity, as men could not think of poſſeſſion, but in courſe of uſe; and ſo every man was ſeiſed to his own uſe, as well as to the uſe of others; therefore becauſe ſtatutes would not ſtir nor turmoil poſſeſſions ſettled at the common law, it putteth in preciſely this word (other:) meaning the divided uſe, and not the conjoined uſe; and this cauſeth the clauſe of joint feoffees to follow in a branch by itſelf; for elſe that caſe had been doubtful upon this word (other.)

THE words that are common to both, are words expreſſing the conveyance whereby the uſe ariſeth, of which words, thoſe that breed any queſtion are (agreement, will, or otherwiſe) whereby ſome have inferred that uſes might be raiſed by agreement parol, ſo there were a conſideration of money, or other matter valuable; for it is expreſſed in the words before (bargain, ſale, and contract) but of blood, or kindred; the error of which collection appeareth in the word immediately following (*viz.* will) whereby they might as well include, that a man ſeiſed of land might raiſe an uſe by will, eſpecially to any of his ſons or kindred, where there is a real conſideration; and by that

reaſon, mean, betwixt this ſtatute and the ſtatute of 32 of wills, lands were deviſeable, eſpecially to any man's kindred, which was clearly otherwiſe; and therefore thoſe words were put in, not in regard of uſes raiſed by thoſe conveyances, or without, or likewiſe by will, might be transferred; and there was a perſon ſeized to a uſe, by force of that agreement or will, (*viz.*) to the uſe of the aſſignee; and for the word (otherwiſe) it ſhould by the generality of the word include a diſſeiſin, to a uſe. But the whole ſcope of the ſtatute croſſeth that which was to execute ſuch uſes, as were confidences and truſt, which could not be in caſe of diſſeiſin; for if there were a commandment precedent, then the land was veſted in *ceſtuy que uſe* upon the entry; and if the diſſeiſin were of the diſſeiſor's own head, then no truſt. And thus much for the caſe of ſuppoſition of this ſtatute; here follow the ordinance and purview thereupon.

The purview hath two parts, the firſt *operatio ſtatuti*, the effect that the ſtatute worketh: and there is *modus operandi*, a fiction, or explanation how the ſtatute doth work that effect. The effect is, that *ceſtuy que uſe* ſhall be in poſſeſſion of like eſtate as he hath in the uſe; the fiction *quomodo* is, that the ſtatute will have the poſſeſſion of *ceſtuy que uſe*, as a new body compounded of matter and form; and that the feoffees ſhall give matter and ſubſtance, and the uſe ſhall give form and quality; the material words in the firſt part of the purview are four.

The firſt words are remainder and reverter, the ſtatute having ſpoken before of uſes in fee-ſimple, in tail, for life, or years, addeth, (or otherwiſe in remainder or reverter:) whereby it is manifeſt, that the firſt words are to be underſtood of uſes in poſſeſſion. For there are two ſubſtantial and eſſential differences of eſtates, the one limiting the times, (for all eſtates are but times of their continuances) this maketh the difference of fee-ſimple, fee-tail, for life or years, and the other maketh difference of poſſeſſion and remainder: all other differences of eſtate are but accidents, as ſhall be ſaid hereafter: theſe two the ſtatute meant to take hold of, and at the words, remainder and reverter it ſtops: it adds not words, (right, title or poſſibility) nor it hath not general words (or otherwiſe:) it is moſt plain, that the ſtatute meant to execute no inferior uſes to remainder or reverter; that is to ſay, no poſſibility or contingencies, but eſtates, only ſuch as the feoffees might have executed by conveyance made. Note alſo, the very letter of the ſtatute doth take notice of a difference between an uſe in remainder and an uſe in reverter; which though it cannot be properly ſo called, becauſe it doth not depend upon particular eſtates, as remainders do, neither did then before the ſtatute draw any tenures as reverſions do; yet the ſtatute intends that there is a difference when the particular uſe, and the uſe limited upon the particular uſe are both new uſes; in which caſe it is a uſe in remainder; and where the particular uſe is a new uſe, and the remnant of the uſe is the old uſe, in which caſe it is a uſe in reverter.

The next material word is (from henceforth) which doth exclude all conceit of relation that *ceſtuy que uſe* ſhall not come in: as from the time of the firſt feoffments to uſe, as *Brudnell*'s conceit was in 14 *Hen.* VIII. That is, the feoffor had granted a rent charge, and *ceſtuy que uſe* had made a feoffment in fee, by the ſtatute of 1 *Richard* III. the feoffor ſhould have held it diſcharged, becauſe the act of *ceſtuy que uſe* ſhall put the feoffor in, as if *ceſtuy que uſe* had been ſeiſed in from the time of the firſt uſe limited; and therefore the ſtatute doth take away all ſuch ambiguities, and expreſſeth that *ceſtuy que uſe* ſhall be in poſſeſſion from henceforth; that is, from the time of the

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parliament for uſes then in being, and from the time of the execution for uſes limited after the parliament.

THE third material words are (lawful ſeiſin, ſtate and poſſeſſion) not a poſſeſſion in law only, but a ſeiſin in fact; not a title to enter into the land, but an actual eſtate.

THE fourth words are of and in ſuch eſtates as they had in the uſe; that is to ſay, like eſtates, fee-ſimple, fee-tail, for life, for years at will, in poſſeſſion, and reverſion, which are the ſubſtantial differences of eſtates, as was ſaid before; but both theſe latter clauſes are more fully perfected and expounded by the branch of the fiction of the ſtatute which follows.

THIS branch of fiction hath three material words or clauſes: the firſt material clauſe is, that the eſtate, right, title, and poſſeſſion that was in ſuch perſon, &c. ſhall be in *ceſtuy que uſe*; for that the matter and ſubſtance of the eſtate of *ceſtuy que uſe* is the eſtate of the feoffee, and more he cannot have; ſo as if the uſe were limited to *ceſtuy que uſe* and his heirs; and the eſtate out of which it was limited was but an eſtate for life, *ceſtuy que uſe* can have no inheritance: ſo if when the ſtatute came the heir of the feoffee had not entred after the death of his anceſtor, but had only a poſſeſſion in law, *ceſtuy que uſe* in that caſe ſhould not bring an aſſize before entry, becauſe the heir of the feoffee could not; ſo that the matter whereupon the uſe muſt work is the feoffee's eſtate. But note here: whereas before when the ſtatute ſpeaks of the uſes, it ſpake only of uſes in poſſeſſion, remainder and reverter, but not in title or right; now when the ſtatute ſpeaks what ſhall be taken from the feoffee, it ſpeaks of title and right: ſo that the ſtatute takes more from the feoffee than it executes preſently, in caſe where there are uſes in contingence which are but titles.

THE ſecond word is (clearly) which ſeems properly and directly to meet with the conceit of *Scintilla Juris*, as well as the words in the preamble of extirpating and extinguiſhing ſuch feoffments, ſo is their eſtate as clearly extinct.

THE third material clauſe is after ſuch quality, manners, form and condition as they had in the uſe; ſo as now as the feoffee's eſtate gives matter, ſo the uſe gives form: and as in the firſt clauſe the uſe was endowed with the poſſeſſion in points of eſtate, ſo here it is endowed with the poſſeſſion in all accidents and circumſtances of eſtate. Wherein firſt note, that it is groſs and abſurd to expound the form of the uſe any whit to deſtroy the ſubſtance of the eſtate; as to make a doubt, becauſe the uſe gave no dower or tenancy by the courteſy, that therefore the poſſeſſion when it is transferred would do ſo likewiſe: no, but the ſtatute meant ſuch quality, manner, form and condition, as it is not repugnant to the corporal preſence and poſſeſſion of the eſtate.

NEXT for the word (condition) I do not hold it to be put in for uſes upon condition, though it be alſo compriſed within the general words; but becauſe I would have things ſtood upon learnedly, and according to the true ſenſe, I hold it but for an explaining, or word of the effect; as it is in the ſtatute of 26 of treaſons, where it is ſaid, that the offenders ſhall be attainted of the overt fact by men of their condition (in this place;) that is to ſay, of their degree or ſort: and ſo the word condition in this place is no more, but in like quality, manner, form and degree or ſort; ſo as all theſe words amount but to (*modo & forma.*) Hence therefore all circumſtances of eſtate are comprehended as ſole ſeiſin, or joint ſeiſin, by intierties, or by moieties, a circumſtance of eſtate to have age as coming in by deſcent, or not age

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as purchaſer, or circumſtance of eſtate deſcendable to the heir of the part of the father, or of the part of the mother. A circumſtance of eſtate conditional or abſolute, remitted or not remitted, with a condition of inter-marriage or without, all theſe are accidents and circumſtances of eſtate, in all which the poſſeſſion ſhall enſue the nature and quality of the uſe: and thus much of the firſt caſe, which is the general caſe.

The ſecond caſe of the joint feoffees needs no expoſition; for it purſueth the penning of the general caſe: only this I will note, that although it had been omitted, yet the law upon the firſt caſe would have been taken as the caſe provided; ſo that it is rather an explanation than an addition: for turn that caſe the other way, that one were infeoffed to the uſe of himſelf, I hold the law to be, that in the former caſe they ſhall be ſeiſed jointly; and ſo in the latter caſe *ceſtuy que uſe* ſhall be ſeiſed ſolely: for the word (other) it ſhall be qualified by the conſtruction of caſes, as ſhall appear when I come to my diviſion. But becauſe this caſe of co-feoffees to the uſe of one of them was a general caſe in the realm, therefore they foreſaw it, expreſs'd it preciſely, and paſs'd over the caſe *e converſo*, which was but an eſpecial caſe: and they were loth to bring in this caſe, by inſerting the word only into the firſt caſe, to have penned it to the uſe only of other perſons; for they had experience what doubt the word (only) bred upon the ſtatute of 1 *R.* III. after this third caſe: and before the third caſe of rents comes in the ſecond ſaving; and the reaſon of it is worth the noting, why the ſavings are interlaced before the third caſe; the reaſon of it is, becauſe the third caſe needeth no ſaving, and the firſt two caſes did need ſavings; and that is the reaſon of that again.

It is a general ground, that where an act of parliament is donor, if it be penned with an (*ac ſi*) it is not a ſaving, for it is a ſpecial gift, and not a general gift, which includes all rights; and therefore in 11 *Henry* VII. where upon the alienation of women, the ſtatute intitles the heir of him in remainder to enter, you find never a ſtranger, becauſe the ſtatute gives entry not (*ſimpliciter*) but within an (*ac ſi*;) as if no alienation had been made, or if the feme had been naturally dead. Strangers that had right might have entred; and therefore no ſaving needs. So in the ſtatute of 32 of leaſes, the ſtatute enacts, that the leaſes ſhall be good and effectual in law, as if the leſſor had been ſeiſed of a good and perfect eſtate in fee-ſimple; and therefore you find no ſaving in the ſtatute; and ſo likewiſe of diverſe other ſtatutes, where the ſtatute doth make a gift or title good ſpecially againſt certain perſons, there needs no ſaving, except it be to exempt ſome of thoſe perſons; as in the ſtatute of 1 *R.* III. Now to apply this to the caſe of rents, which is penned with an (*ac ſi*) (*viz.*) as if a ſufficient grant, or lawful conveyance had been made, or executed by ſuch as were ſeiſed; why if ſuch a grant of a rent had been made, one that had an ancient right might have entred and have avoided the charge; and therefore no ſaving needeth: but the ſecond firſt caſes are not penned with an (*ac ſi*) but abſolute, that *ceſtuy que uſe* ſhall be adjudged in eſtate and poſſeſſion, which is a judgment of parliament ſtronger than any fine, to bind all rights; nay, it hath farther words (*viz.*) in lawful eſtate and poſſeſſion, which maketh it ſtronger than any in the firſt clauſe. For if the words only had ſtood upon the ſecond clauſe (*viz.*) that the eſtate of the feoffee ſhould be in *ceſtuy que uſe*, then perhaps the gift ſhould have been ſpecial, and ſo the ſaving ſuperfluous: and this note is material in regard of the great queſtion, whether the feoffees may make any regreſs; which opinion (I mean, that no regreſs is left unto them)

is principally to be argued out of the ſaving; as ſhall be now declared: for the ſavings are two in number; the firſt ſaveth all ſtrangers rights, with an exception of the feoffees; the ſecond is a ſaving out of the exception of the firſt ſaving (*viz.*) of the feoffees in caſe where they claim to their own proper uſe: it had been eaſy in the firſt ſaving out of the ſtatute (other than ſuch perſons as are ſeiſed, or hereafter ſhould be ſeiſed to any uſe) to have added theſe words (executed by this ſtatute;) or in the ſecond ſaving to have added unto the words (claiming to their proper uſe) theſe words (or to the uſe of any other, and executed by this ſtatute:) but the regreſs of the feoffee is ſhut out between the two ſavings; for it is the right of a perſon claiming to an uſe, and not unto his own proper uſe; but it is to be added, that the firſt ſaving is not to be underſtood as the letter implieth, that feoffees to uſe ſhall be barr'd of their regreſs, in caſe that it be of another feoffment than that whereupon the ſtatute hath wrought, but upon the ſame feoffment; as if the feoffee before the ſtatute had been diſſeiſed, and the diſſeiſed had made a feoffment in fee to *I. D.* his uſe, and then the ſtatute came: this executeth the uſe of the ſecond feoffment; but the firſt feoffees may make a regreſs, and they yet claim to an uſe, but not by that feoffment upon which the ſtatute hath wrought.

Now followeth the third caſe of the ſtatute, touching execution of rents; wherein the material words are four:

First, whereas diverſe perſons are ſeiſed, which hath bred a doubt that it ſhould only go to rents in uſe, at the time of the ſtatute; but it is explained in the clauſe following (*viz.*) as if a grant had been made to them by ſuch as are or ſhall be ſeiſed.

The ſecond word is (*profit*) for in the putting of the caſe, the ſtatute ſpeaketh of a rent; but after in the purview is added theſe words (or *profit.*)

The third word is (*ac ſi*) *ſcil.* that they ſhall have the rent as if a ſufficient grant or lawful conveyance had been made and executed unto them.

The fourth words are the words of liberty and remedies attending upon ſuch rent, *ſcil.* that he ſhall diſtrain, *&c.* and have ſuch ſuits, entries, and remedies, relying again with an (*ac ſi*) as if the grant had been made with ſuch collateral penalties and advantages.

Now for the proviſoes; the makers of this law did ſo abound with policy and diſcerning, as they did not only foreſee ſuch miſchiefs as were incident to this new law immediately, but likewiſe ſuch as were conſequent in a remote degree; and therefore beſides the expreſs proviſoes, they did add three new proviſoes which are in themſelves ſubſtractive laws: for foreſeeing that by the execution of uſes, wills formerly made ſhould be overthrown; they made an ordinance for wills. Foreſeeing likewiſe, that by execution of uſes, women ſhould be doubly advanced; they made an ordinance for dowers and jointures. Foreſeeing again, that the execution of uſes would make *franktenement* paſs by contracts paroll, they made an ordinance for inrollments of bargains and ſales. The two former they inſerted into this law, and the third they diſtinguiſhed into a law apart, but without any preamble as may appear, being but a proviſo to this ſtatute. Beſides all theſe proviſional laws; and beſides four proviſoes, whereof three attend upon the law of jointure, and one of perſons born in *Wales*, which are not material to the purpoſe in hand: There are ſix proviſoes which are natural and true members and limbs of the ſtatute, whereof four concern the part of *ceſtuy que uſe*, and two

concern the part of the feoffees: The four which concern the part of *ceſtuy que uſe*, tend all to ſave him from prejudice by the execution of the eſtate.

THE firſt ſaveth him from the extinguiſhment of any ſtatute or recognizance, as if a man had an extent of a hundred acres, and an uſe of the inheritance of one. Now the ſtatute executing the poſſeſſion to that one, would have extinguiſh'd his extent being intire in all the reſt: or as if the conuſee of a ſtatute having ten acres liable to the ſtatute, had made a feoffment in fee to a ſtranger of two, and after had made a feoffment in fee to the uſe of the conuzee and his heirs. And upon this proviſo there ariſe three queſtions: Firſt, whether this proviſo were not ſuperfluous, in regard that *ceſtuy que uſe* was comprehended in the general ſaving, though the feoffees be excluded?

SECONDLY, whether this proviſo doth ſave ſtatutes or executions, with an apportionment or entire?

THIRDLY, becauſe it is penned indefinitely in point of time, whether it ſhall go to uſes limited after the ſtatute, as well as to thoſe that were in being at the time of the ſtatute; which doubt is rather inforced by this reaſon, becauſe there was for † uſes at the time of the ſtatute; for that the execution of the ſtatute might be waived: but both poſſeſſion and uſe, ſince the ſtatute, may be waived.

THE ſecond proviſo ſaveth *ceſtuy que uſe* from the charge of *primer ſeiſin*, *liveries*, *ouſter le maines*, and ſuch other duties to the King, with an expreſs limitation of time: that he ſhall be diſcharged for the time paſt, and charged for the time to come to the King, *viz.* *May* 1536. to be *communis terminus*.

THE third proviſo doth the like for fines, reliefs, and herriots, diſcharging them for the time paſt, and ſpeaking nothing of the time to come.

THE fourth proviſo giveth to *ceſtuy que uſe* all collateral benefits of vouchers, aid-priers, actions of waſte, treſpaſs, conditions broken, and which the feoffees might have had; and this is expreſly limited for eſtates executed before 1 *May* 1536. And this proviſo giveth occaſion to intend that none of theſe benefits would have been carried to *ceſtuy que uſe*, by the general words in the body of the law, *ſcil.* that the Feoffees eſtate, right, title, and poſſeſſion, *&c.*

FOR the two proviſoes on the part of the tertenant, they both concern the ſaving of ſtrangers from prejudice, *&c.*

THE firſt ſaves actions depending againſt the feoffees, that they ſhall not abate.

THE ſecond ſaves wardſhips, liveries, and *ouſter le maines*, whereof title was veſted in regard of the heir of the feoffee, and this in caſe of the King only.

What perſons may be ſeiſed to an uſe, and what not.
What perſons may be ceſtuy que uſe, *and what not.*
What perſons may declare an uſe, and what not.

THOUGH I have opened the ſtatute in order of words, yet I will make my diviſion in order of matter, *viz.*

1. THE raiſing of uſes.
2. THE interruption of uſes.
3. THE executing of uſes.

AGAIN, the raiſing of uſes doth eaſily divide it ſelf into three parts.

THE perſons that are actors to the conveyance to uſe.
THE uſe it ſelf.
THE form of the conveyance.

THEN

† The text here is manifeſtly corrupted, nor does any probable conjecture occur for its amendment.

THEN it is firſt to be ſeen what perſons may be ſeiſed to an uſe, and what not; and what perſons may be *ceſtuy que uſe*, and what not.

THE King cannot be ſeiſed to an uſe; no, not where he taketh in his natural body, and to ſome purpoſe as a common perſon; and therefore if land be given to the King and *I. D. per terme de lour vies*, this uſe is void for a moiety.

LIKE law is, if the King be ſeiſed of land in the right of his duchy of *Lancaſter*, and covenanteth by his letters patent under the duchy ſeal to ſtand ſeiſed to the uſe of his ſon, nothing paſſeth.

LIKE law, if King *R.* III. who was feoffee to diverſe uſes before he took upon him the crown, had after he was King by his letters patent granted the land over, the uſes had not been renewed.

THE Queen, (ſpeaking not of an imperial Queen but by marriage) cannot be ſeiſed to an uſe, though ſhe be a body enabled to grant and purchaſe, without the King: yet in regard of the government and intereſt the King hath in her poſſeſſion, ſhe cannot be ſeiſed to an uſe.

A CORPORATION cannot be ſeiſed to an uſe, becauſe their capacity is to a uſe certain; again, becauſe they cannot execute an eſtate without doing wrong to their corporation or founder; but chiefly becauſe of the letter of this ſtatute which (in any clauſe when it ſpeaketh of the feoffee) reſteth only upon the word (perſon,) but when it ſpeaketh of *ceſtuy que uſe*, it addeth perſon or body politick.

IF a biſhop bargain and ſell lands whereof he is ſeiſed in the right of his ſee, this is good during his life; otherwiſe it is where a biſhop is infeoffed to him and his ſucceſſors, to the uſe of *I. D.* and his heirs, that is not good, no not for the biſhop's life, but the uſe is merely void.

CONTRARY law of tenant in tail; for if I give land in tail by deed ſince the ſtatute to *A*, to the uſe of *B* and his heirs; *B* hath a fee-ſimple determinable upon the death of *A* without iſſue. And like law, though doubtful before the ſtatute, was; for the chief reaſon which bred the doubt before the ſtatute, was becauſe tenant in tail could not execute an eſtate without wrong; but that ſince the ſtatute is quite taken away, becauſe the ſtatute ſaveth no right of intail, as the ſtatute of 1 *R.* III. did; and that reaſon likewiſe might have been anſwered before the ſtatute, in regard of the common recovery.

A FEME covert and an infant, though under years of diſcretion, may be ſeiſed to an uſe; for as well as land might deſcend unto them from a feoffee to uſe, ſo may they originally be infeoffed to an uſe; yet if it be before the ſtatute, and they had (upon a *ſubpoena* brought) executed their eſtate during the coverture or infancy, they might have defeated the ſame; and when they ſhould have been ſeiſed again to the uſe, and not to their own uſe; but ſince the ſtatute no right is ſaved unto them.

IF a feme covert or an infant be enfeoffed to an uſe precedent ſince the ſtatute, the infant or baron come too late to diſcharge or root up the feoffment; but if an infant be infeoffed to the uſe of himſelf and his heirs, and *I. D.* pay ſuch a ſum of money to the uſe of *I. G.* and his heirs, the infant may diſagree and overthrow the contingent uſe.

CONTRARY law, if an infant be infeoffed to the uſe of himſelf for life, the remainder to the uſe of *I. S.* and his heirs, he may diſagree to the feoffment as to his own eſtate, but not to diveſt the remainder, but it ſhall remain to the benefit of him in remainder.

AND

And yet if an attainted Perſon be infeoffed to an uſe, the King's title, after office found, ſhall prevent the uſe, and relate above it; but until office the *ceſtuy que uſe* is ſeiſed of the land.

Like law of an alien; for if land be given to an alien to an uſe, the uſe is not void *ab initio:* yet neither alien or attainted perſon can maintain an action to defend the land.

The King's villain if he be infeoffed to an uſe, the King's title ſhall relate above the uſe, otherwiſe in caſe of a common perſon.

But if the lord be infeoffed to the uſe of his villain, the uſe neither riſeth, but the lord is in by the common law, and not by the ſtatute diſcharged of the uſe.

But if the huſband be infeoffed to the uſe of his wife for years, if he die the wife ſhall have the term, and it ſhall not inure by way of diſcharge, although the huſband may diſpoſe of the wife's term.

So if the lord of whom the land is held be infeoffed to the uſe of a perſon attainted, the lord ſhall not hold by way of diſcharge of the uſe, becauſe of the King's title, *Annum diem & vaſtum.*

A person uncertain is not within the ſtatute, nor any eſtate *in nubibus* or ſuſpenſe executed: as if I give land to *I. S.* the remainder to the right heirs of *I. D.* to the uſe of *I. N.* and his heirs, *I. N.* is not ſeiſed of the fee-ſimple of an eſtate *pur vie* of *I. S.* till *I. D.* be dead, and then in fee-ſimple.

Like law; if before the ſtatute I give land to *I. S. pur autre vie* to an uſe, and *I. S.* dieth, living *ceſtuy que uſe*, whereby the freehold is in ſuſpenſe, the ſtatute cometh, and no occupant entreth; the uſe is not executed out of the freehold in ſuſpenſe for the occupant, the diſſeiſor, the lord by eſcheat. The feoffee upon conſideration, not having notice, and all other perſons which ſhall be ſeiſed to uſe, not in regard of their perſons but of their title; I refer them to my diviſion touching diſturbance and interruption of uſes.

It followeth now to ſee what perſon may be a *ceſtuy que uſe*. The King may be *ceſtuy que uſe*; but it behoveth both the declaration of the uſe, and the conveyance it ſelf, to be matter of record, becauſe the King's title is compounded of both; I ſay, not appearing of record, but by conveyance of record. And therefore if I covenant with *I. S.* to levy a fine to him to the King's uſe, which I do accordingly; and this deed of covenant be not inroll'd, and the deed be found by office, the uſe veſteth not. *E converſo*, if inroll'd. If I covenant with *I. S.* to infeof him to the King's uſe, and the deed be inroll'd, and the feoffment alſo be found by office, the uſe veſteth.

But if I levy a fine, or ſuffer a recovery to the King's uſe, and declare the uſe by deed of covenant enroll'd, though the King be not party, yet it is good enough.

A Corporation may take an uſe, and yet it is not material whether the feoffment or the declaration be by deed; but I may infeoff *I. S.* to the uſe of a corporation, and this uſe may be averred.

A Use to a perſon uncertain is not void in the firſt limitation, but executeth not till the perſon be *in eſſe*; ſo that this is poſitive, that an uſe ſhall never be in abeyance as a remainder may be, but ever in a perſon certain upon the words of the ſtatute, and the eſtate of the feoffees ſhall be in him or them which have the uſe. The reaſon is, becauſe no confidence can be repoſed in a perſon unknown and uncertain; and therefore if I make a feoffment to the uſe of *I. S.* for life, and then to the uſe of the right heirs

of *I. D.* the remainder is not in abeyance, but the reverſion is in the feoffor, (*quouſque.*) So that upon the matter all perſons uncertain in uſe, are like conditions or limitations precedent.

LIKE law, if I enfeoff one to the uſe of *I. S.* for years, the remainder to the right heirs of *I. D.* This is not executed in abeyance, and therefore not void.

LIKE law, if I make a feoffment to the uſe of my wife that ſhall be, or to ſuch perſons as I ſhall maintain, though I limit no particular eſtate at all; yet the uſe is good, and ſhall in the interim return to the feoffor.

CONTRARY law, if I once limit the whole fee-ſimple of the uſe out of land, and part thereof to a perſon uncertain, it ſhall never return to the feoffor by way of fraction of the uſe: but look how it ſhould have gone unto the feoffor; if I begin with a contingent uſe, ſo it ſhall go to the remainder; if I entail a contingent uſe, both eſtates are alike ſubject to the contingent uſe when it falleth; as when I make a feoffment in fee to the uſe of my wife for life, the remainder to my firſt begotten ſon; I having no ſon at that time, the remainder to my brother and his heirs: if my wife die before I have any ſon, the uſe ſhall not be in me, but in my brother. And yet if I marry again, and have a ſon, it ſhall diveſt from my brother, and be in my ſon, which is the ſkipping they talk ſo much of.

So if I limit an uſe jointly to two perſons, not *in eſſe*, and the one cometh to be *in eſſe*, he ſhall take the entire uſe; and yet if the other afterward come *in eſſe*, he ſhall take jointly with the former; as if I make a feoffment to the uſe of my wife that ſhall be, and my firſt begotten ſon for their lives, and I marry; my wife taketh the whole uſe, and if I afterwards have a ſon, he taketh jointly with my wife.

BUT yet where words of abeyance work to an eſtate executed in courſe of poſſeſſion, it ſhall do the like in uſes; as if I enfeoff *A* to the uſe of *B* for life, the remainder to *C* for life, the remainder to the right heirs of *B*, this is a good remainder executed.

So if I enfeoff *A* to the uſe of his right heirs, *A* is in the fee-ſimple, not by the ſtatute, but by the common law.

NOW are we to examine a ſpecial point of the diſability of ſuch perſons as do take by the ſtatute: and that upon the words of the ſtatute, where diverſe perſons are ſeiſed to the uſe of other perſons; ſo that by the letter of the ſtatute, no uſe is contained: but where the feoffor is one, and *ceſtuy que uſe* is another.

THEREFORE it is to be ſeen in what caſes the ſame perſons ſhall be both ſeiſed to the uſe and *ceſtuy que uſe*, and yet in by the ſtatute; and in what caſes they ſhall be diverſe perſons, and yet in by the common law; wherein I obſerve unto you three things: Firſt, that the letter is full in the point. Secondly, that it is ſtrongly urged by the clauſe of joint eſtates following. Thirdly, that the whole ſcope of the ſtatute was to remit the common law, and never to intermeddle where the common law executed an eſtate; therefore the ſtatute ought to be expounded, that where the party ſeiſed to the uſe, and the *ceſtuy que uſe* is one perſon, he never taketh by the ſtatute, except there be a direct impoſſibility or impertinency for the uſe, to take effect by the common law.

AND if I give land to *I. S.* to the uſe of himſelf and his heirs; and if *I. D.* pay a ſum of money, then to the uſe of *I. D.* and his heirs, *I. S.* is in of an eſtate for life, or for years, by way of abridgment of eſtate in courſe of poſſeſſion, and *I. D.* in of the fee-ſimple by the ſtatute.

So if I bargain and ſell my land after ſeven years, the inheritance of the uſe only paſſeth; and there remains an eſtate for years by a kind of ſubſtraction of the inheritance or occupier of my eſtate, but merely at the common law.

But if I enfeoff *I. S.* to the uſe of himſelf in tail, and then to the uſe of *I. D.* in fee, or covenant to ſtand ſeiſed to the uſe of my ſelf in tail, and to the uſe of my wife in fee; in both theſe caſes the eſtate tail is executed by this ſtatute; becauſe an eſtate tail cannot be re-occupied out of a fee-ſimple, being a new eſtate, and not like a particular eſtate for life or years, which are but portions of the abſolute fee; and therefore if I bargain and ſell my land to *I. S.* after my death without iſſue, it doth not leave an eſtate tail in me, nor veſteth any preſent fee in the bargainee, but is an uſe expectant.

So if I enfeoff *I. S.* to the uſe of *I. D.* for life, and then to the uſe of himſelf and his heirs, he is in of the fee-ſimple merely in courſe of poſſeſſion, and as of a reverſion, and not of a remainder.

Contrary law, if I enfeoff *I. S.* to the uſe of *I. D.* for life, then to the uſe of himſelf for life, the remainder to the uſe of *I. N.* in fee: Now the law will not admit fraction of eſtates; but *I. S.* is in with the reſt by the ſtatute.

So if I enfeoff *I. S.* to the uſe of himſelf and a ſtranger, they ſhall be both in by the ſtatute, becauſe they could not take jointly, taking by ſeveral titles.

Like law, if I enfeoff a biſhop and his heirs to the uſe of himſelf, and his ſucceſſors, he is in by the ſtatute in the right of his ſee.

And as I cannot raiſe a preſent uſe to one out of his own ſeiſin; ſo if I limit a contingent or future uſe to one being at the time of limitation not ſeiſed, but after become ſeiſed at the time of the execution of the contingent uſe, there is the ſame reaſon and the ſame law, and upon the ſame difference which I have put before.

As if I covenant with my ſon, that after his marriage I will ſtand ſeiſed of land to the uſe of himſelf and his heirs; and before marriage I enfeoff him to the uſe of himſelf and his heirs, and then he marrieth; he is in by the common law, and not by the ſtatute; like law of a bargain and ſale.

But if I had let to him for life only, then he ſhould have been in for life only by the common law, and of the fee-ſimple by ſtatute. Now let me adviſe you of this, that it is not a matter of ſubtilty or conceit to take the law right, when a man cometh in by the law in courſe of poſſeſſion, and where he cometh in by the ſtatute in courſe of poſſeſſion; but it is material for the deciding of many cauſes and queſtions, as for warranties, actions, conditions, waivers, and diverſe other proviſoes.

For example; a man's farmer committed waſte: after he in reverſion covenanteth to ſtand ſeiſed to the uſe of his wife for life, and after to the uſe of himſelf and his heirs; his wife dies; if he be in his fee untouch'd, he ſhall puniſh the waſte; if he be in by the ſtatute, he ſhall not puniſh it.

So if I be infeoffed with warranty, and I covenant with my ſon to ſtand ſeiſed to the uſe of my ſelf for life, and after to him and his heirs; if I be in by the ſtatute, it is clear my warranty is gone; but if I be in by the common law, it is doubtful.

So if I have an eigne right, and be infeoffed to the uſe of *I. S.* for life, then to the uſe of my ſelf for life, then to the uſe of *I. D.* in fee, *I. S.* dieth. If I be in by the common law, I cannot wave my eſtate, having agreed

to

to the feoffment: but if I am in by the ſtatute, yet I am not remitted, becauſe I come in by my own act: but I may waive my uſe, and bring an action preſently; for my right is ſaved unto me by one of the ſavings in the ſtatute. Now on the other ſide it is to be ſeen, where there is a ſeiſin to the uſe of another perſon; and yet it is out of the ſtatute which is in ſpecial caſes upon the ground, whereſoever *ceſtuy que uſe* had remedy for the poſſeſſion by courſe of common law, there the ſtatute never worketh; and therefore if a diſſeiſin were committed to an uſe, it is in him by the common law upon agreement; ſo if one enter as occupant to the uſe of another, it is in him till diſagreement.

So if a feme enfeoff a man (*cauſa matrimonii praelocuti*) ſhe hath remedy for the land again by courſe of the law; and therefore in thoſe ſpecial caſes the ſtatute worketh not; and yet the words of the ſtatute are general, (where any perſon ſtands ſeiſed by force of any fine, recovery, feoffment, bargain and ſale, agreement or otherwiſe) but yet the feme is to be reſtrained for the reaſon aforeſaid.

It remaineth to ſhew what perſons may limit and declare an uſe: wherein we muſt diſtinguiſh; for there are two kinds of declarations of uſes, the one of a preſent uſe upon the firſt conveyance, the other upon a power of revocation or new declaration; the latter of which I refer to the diviſion of revocation: now for the former.

The King upon his letters patent may declare an uſe, though the patent itſelf implieth an uſe, if none be declared.

If the King gives lands by his letters to *I. S.* and his heirs, to the uſe of *I. S.* for life, the King hath the inheritance of the uſe by implication of the patent, and no office needeth; for implication out of matter of record, amounteth ever to matter of record.

If the Queen give land to *I. S.* and his heirs to the uſe of all the churchwardens of the church of *Dale*, the patentee is ſeiſed to his own uſe, upon that confidence or intent; but if a common perſon had given land in that manner, the uſe had been void by the ſtat. of 23 *H.* VIII. and the uſe had returned to the feoffor and his heirs. A corporation may take an uſe without deed, as hath been ſaid before; but can limit no uſe without deed.

An infant may limit an uſe upon a feoffment, fine, or recovery, and he cannot countermand or avoid the uſe, except he avoid the conveyance; contrary, if an infant covenant in conſideration of blood or marriage to ſtand ſeiſed to an uſe, the uſe is merely void.

If an infant bargain and ſell his land for money, for commons or teaching, it is good with averment; if for money, otherwiſe: if it be proved it is avoidable; if for money recited and not paid, it is void; and yet in the caſe of a man of full age the recital ſufficeth.

If baron and feme be ſeiſed in the right of the feme, or by joint purchaſe during the coverture, and they join in a fine, the baron cannot declare the uſe for longer time than the coverture, and the feme cannot declare alone; but the uſe goeth according to the limitation of law, unto the feme and her heirs: but they may both join in declaration of the uſe in fee; and if they ſever, then it is good for ſo much of the inheritance as they concurr'd in; for the law avoucheth all one as if they join'd: as if the baron declare an uſe to *I. S.* and his heirs, and the feme another to *I. D.* for life, and then to *I. S.* and his heirs, the uſe is good to *I. S.* in fee.

And if upon examination the feme will declare the uſe to the judge, and her huſband agree not to it, it is void, and the baron's uſe is only good; the reſt of the uſe goeth according to the limitation of law.

THE

THE ARGUMENT OF Sir *FRANCIS BACON*, Kt.

His MAJESTY's Sollicitor General,

In the Caſe of the POST-NATI of *SCOTLAND*, in the Exchequer-Chamber, before the Lord Chancellor and all the Judges of *England*.

May it pleaſe your Lordſhips,

THIS caſe your lordſhips do well perceive to be of exceeding great conſequence. For whether you do meaſure that by place, that reacheth not only to the realm of *England*, but to the whole iſland of *Great-Britain*; or whether you meaſure that by time, that extended not only to the preſent time, but much more to future generations:

Et nati natorum, & qui naſcentur ab illis:

AND therefore as that is to receive at the bar a full and free debate, ſo I doubt not but that ſhall receive from your lordſhips a ſound and juſt reſolution according to law, and according to truth. For my lords, though he were thought to have ſaid well that ſaid that for his word, *Rex fortiſſimus*; yet he was thought to have ſaid better, even in the opinion of a King himſelf, that ſaid, *veritas fortiſſima & praevalet:* And I do much rejoice to obſerve ſuch a concurrence in the whole carriage of this cauſe; to this end, that truth may prevail. The caſe no feigned, or framed caſe; but a true caſe between true parties.

THE title handled formerly in ſome of the King's courts, and free-hold upon it; uſed indeed by his Majeſty in his high wiſdom to give an end to this great queſtion, but not raiſed; *occaſio*, as the ſchoolmen ſay, *arrepta non porrecta*.

THE caſe argued in the King's-bench by M. *Walter* with great liberty, and yet with good approbation of the court: The perſons aſſigned to be of counſel on that ſide, inferior to none of their quality and degree in learning; and ſome of them moſt converſant and exerciſed in the queſtion.

THE judges in the King's-bench have adjourned it to this place for conference with the reſt of their brethren. Your lordſhip, my Lord Chancellor, though you be abſolute judge in the court where you ſit, and might have called to you ſuch aſſiſtance of judges as to you had ſeemed good; yet would not forerun or lead in this caſe by any opinion there to be given; but have choſen rather to come your ſelf to this aſſembly; all tending (as I ſaid) to this end; whereunto I for my part do heartily ſubſcribe, *ut vincat veritas*, that truth may firſt appear, and then prevail. And I do firmly hold, and doubt not but I ſhall well maintain, that this is the truth, that *Calvin* the plaintiff is *ipſo jure* by the law of *England* a natural born ſubject, to purchaſe

free-hold, and to bring real actions within *England*. In this case I must so consider the time, as I must much more consider the matter. And therefore though it may draw my speech into farther length; yet I dare not handle a case of this nature confusedly, but purpose to observe the ancient and exact form of pleadings; which is,

First, to explain or induce.

Then, to confute, or answer objections.

And lastly, to prove, or confirm.

And first for explanation. The outward question in this case is no more, but whether a child born in *Scotland* since his Majesty's happy coming to the crown of *England*, be naturalized in *England* or no? But the inward question or state of the question evermore beginneth, where that which is confessed on both sides doth leave.

It is confest, that if these two realms of *England* and *Scotland* were united under one law and one parliament, and thereby incorporated and made as one kingdom, that the *Post-natus* of such an union should be naturalized.

It is confessed, that both realms are united in the person of our sovereign; or (because I will gain nothing by surreption, in the putting of the question) that one and the same natural person is King of both realms.

It is confessed, that the laws and parliaments are several. So then, whether this privilege and benefit of naturalization be an accessory or dependency upon that which is one and joint, or upon that which is several, hath been, and must be the depth of this question. And therefore your lordships do see the state of this question doth evidently lead me by way of inducement to speak of three things. The king, the law, and the privilege of naturalization. For if you well understand the nature of the two principals, and again the nature of the accessory; then shall you discern, to whether principal the accessory doth properly refer, as a shadow to a body, or iron to an adamant.

And there your lordships will give me leave in a case of this quality, first to visit and open the foundations and fountains of reason, and not to begin with the positions and eruditions of a municipal law; for so was that done in the great case of mines; and so ought that to be done in all cases of like nature. And this doth not at all detract from the sufficiency of our laws, as incompetent to decide their own cases, but rather addeth a dignity unto them, when their reason appearing as well as their authority, doth shew them to be as fine monies, which are current not only by the stamp, because they are so received, but by the natural metal, that is the reason and wisdom of them.

And master *Littleton* himself in his whole book doth commend but two things to the professors of the law by the name of his sons; the one the inquiring and searching out the reasons of the law, and the other the observing of the forms of pleadings. And never was there any case that came in judgment that required more, that *Littleton*'s advice should be followed in those two points, than doth the present case in question: and first of the King.

It is evident that all other commonwealths (monarchies only excepted) do subsist by a law precedent. For where authority is divided amongst many officers, and they not perpetual, but annual or temporary, and not to receive their authority but by election, and certain persons to have voice only to that election, and the like; these are busy and curious frames, which of necessity

neceſſity do pre-ſuppoſe a law precedent, written or unwritten, to guide and direct them: but in monarchies, eſpecially hereditary, that is, when ſeveral families or lineages of people do ſubmit themſelves to one line, imperial or royal, the ſubmiſſion is more natural and ſimple, which afterwards by laws ſubſequent is perfected and made more formal; but that is grounded upon nature. That this is ſo, it appeareth notably in two things; the one the platforms and patterns which are found in nature of monarchies; the original ſubmiſſions, and their motives and occaſions. The platforms are three:

THE firſt is that of a father, or chief of a family; who governing over his wife by prerogative of ſex, over his children by prerogative of age, and becauſe he is author unto them of being, and over his ſervants by prerogative of virtue and providence, (for he that is able of body, and improvident of mind, is *natura ſervus*) that is a very model of a King. So is the opinion of *Ariſtotle*, lib. 3. pol. cap. 14. where he ſaith, *Verum autem regnum eſt, cum penes unum eſt rerum ſumma poteſtas: quod regnum procurationem familiae imitatur.*

AND therefore *Lycurgus*, when one counſelled him to diſſolve the kingdom, and to eſtabliſh another form of eſtate: he anſwered, Sir, begin to do that which you adviſe firſt at home in your own houſe, noting, that the chief of a family is as a King; and that thoſe that can leaſt endure Kings abroad, can be content to be Kings at home. And this is the firſt platform, which we ſee is merely natural.

THE ſecond is, that of a ſhepherd and his flock, which *Xenophon* ſaith, *Cyrus* had ever in his mouth. For ſhepherds are not owners of the ſheep; but their office is to feed and govern: no more are Kings *proprietaries*, or owners of the people; for God is ſole owner of people. The nations, as the ſcripture ſaith, are his inheritance: but the office of Kings is to govern, maintain, and protect people. And that is not without a myſtery, that the firſt King that was inſtituted by God, *David*, (for *Saul* was but an untimely fruit) was tranſlated from a ſhepherd, as you have it in *Pſal.* lxxviii. *Et elegit* David *ſervum ſuum, de gregibus ovium ſuſtulit eum,* ——— *paſcere* Jacob *ſervum ſuum, & Iſrael haereditatem ſuam.* This is the ſecond platform; a work likewiſe of nature.

THE third platform is the government of God himſelf over the world, whereof lawful monarchies are a ſhadow. And therefore both amongſt the Heathen, and amongſt the Chriſtians, the word *(ſacred)* hath been attributed unto Kings, becauſe of the conformity of a monarchy with the divine Majeſty; never to a ſenate or people. And ſo you find it twice in the lord *Coke*'s reports; once in the ſecond book, the biſhop of *Wincheſter*'s caſe; and his fifth book, *Cawdrie*'s caſe; and more anciently in the 10 of *H.* VII. fo. 18. *Rex eſt perſona mixta cum ſacerdote*; an attribute which the ſenate of *Venice*, or a canton of *Swiſſes* can never challenge. So we ſee there be precedents, or platforms of monarchies, both in nature and above nature; even from the monarch of heaven and earth to the King (if you will) in an hive of bees. And therefore other ſtates are the creatures of the law; and this ſtate only ſubſiſteth by nature.

FOR the original ſubmiſſions, they are four in number: I will briefly touch them: The firſt is paternity or patriarchy, which was when a family growing ſo great as it could not contain itſelf within one habitation, ſome branches of the deſcendents were forced to plant themſelves into new families, which ſecond families could not by a natural inſtinct and inclination, but bear a reverence and yield an obeiſance to the eldeſt line of the ancient family from which they were derived.

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THE ſecond is, the admiration of virtue, or gratitude towards merit, which is likewiſe naturally infuſed into all men. Of this *Ariſtotle* putteth the caſe well, when it was the fortune of ſome one man, either to invent ſome arts of excellent uſe towards man's life, or to congregate people, that dwelt ſcattered, into one place, where they might cohabit with more comfort, or to guide them from a more barren land to a more fruitful, or the like: upon theſe deſerts, and the admiration and recompenſe of them, people ſubmitted themſelves.

THE third, which was the moſt uſual of all, was conduct in war, which even in nature induceth as great an obligation as paternity. For as men owe their life and being to their parents in regard of generation, ſo they owe that alſo to ſaviours in the wars in regard of preſervation. And therefore we find in chap. xviii. of the book of *Judges*, ver. 22. *Dixerunt omnes viri ad Gideon, dominare noſtri, tu & filii tui, quoniam ſervaſti nos de manu Madian.* And ſo we read when it was brought to the ears of *Saul*, that the people ſung in the ſtreets, *Saul* hath kill'd *his thouſand*, and *David his ten thouſand* of enemies, he ſaid ſtraightways: *Quid ei ſupereſt niſi ipſum regnum?* For whoſoever hath the military dependence, wants little of being King.

THE fourth is an enforced ſubmiſſion, which is conqueſt, whereof it ſeemed *Nimrod* was the firſt precedent, of whom it is ſaid, *Ipſe coepit potens eſſe in terra, & erat robuſtus venator coram Domino.* And this likewiſe is upon the ſame root, which is the ſaving or gift as it were of life and being; for the conqueror hath power of life and death over his captives; and therefore where he giveth them themſelves, he may reſerve upon ſuch a gift what ſervice and ſubjection he will. All theſe four ſubmiſſions are evident to be natural and more ancient than law.

TO ſpeak therefore of law, which is the ſecond part of that which is to be ſpoken of by way of inducement. Law no doubt is the great organ by which the ſovereign power doth move, and may be truly compared to the ſinews in a natural body, as the ſovereignty may be compared to the ſpirits; for if the ſinews be without the ſpirits, they are dead and without motion; if the ſpirits move in weak ſinews, it cauſeth trembling: ſo the laws without the King's power are dead; the King's power, except the laws be corroborate, will never move conſtantly, but be full of ſtaggering and trepidation. But towards the King himſelf, the law doth a double office or operation: the firſt is to entitle the King, or deſign him; and in that ſenſe *Bracton* ſaith well, lib. 1. fol. 5. and lib. 3. fol. 107. *Lex facit quod ipſe ſit Rex*; that is, it defines his title as in our law; that the kingdom ſhall go to the iſſue female; that it ſhall not be departable amongſt daughters; that the half-blood ſhall be reſpected, and other points differing from the rules of common inheritance. The ſecond is (that whereof we need not fear to ſpeak in good and happy times, ſuch as theſe are) to make the ordinary power of the King more definite or regular; for it was well ſaid by a father, *plenitudo poteſtatis eſt plenitudo tempeſtatis.* And although the King, in his perſon, be *ſolutus legibus*, yet his acts and grants are limited by law, and we argue them every day.

BUT I demand, do theſe offices or operations of law evacuate or fruſtrate the original ſubmiſſion, which was natural? Or ſhall it be ſaid that all the allegiance is by law? No more than it can be ſaid, that *poteſtas patris*, the power of the father over the child, is by law: and yet no doubt laws do diverſly define of that alſo; the law of ſome nations having given fathers power to put their children to death; others, to ſell them thrice; others

to disinherit them by testament at pleasure, and the like. Yet no man will affirm, that the obedience of the child is by law, though laws in some points do make it more positive: and even so it is of allegiance of subjects to hereditary monarchs, which is corroborate, and confirmed by law, but is the work of the law of nature. And therefore you shall find the observation true, and almost general in all states, that their law-givers were long after their first Kings, who governed for a time by natural equity without law: so was *Theseus* long before *Solon* in *Athens*: so was *Eurytion* and *Sous* long before *Lycurgus* in *Sparta*: So was *Romulus* long before the *decemviri*. And even amongst our selves, there were more ancient Kings of the *Saxons*; and yet the laws ran under the name of *Edgar*'s laws. And in the refounding of the kingdom in the person of *William* the Conqueror, when the laws were in some confusion for a time, a man may truly say, that King *Edward* I. was the first law-giver, who enacting some laws, and collecting others, brought the law to some perfection. And therefore I will conclude this point with the style which divers acts of parliaments do give unto the King: which term him very effectually and truly, our natural sovereign liege lord. And as it was said by a principal judge here present when he served in another place, and question was moved by some occasion of the title of *Bullein*'s lands, that he would never allow that Queen *Elizabeth* (I remember it for the efficacy of the phrase) should be a statute Queen, but a common law Queen: so surely I shall hardly consent that the King shall be esteemed or called only our rightful sovereign, or our lawful sovereign, but our natural liege sovereign; as acts of parliament speak: for as the common law is more worthy than the statute law; so the law of nature is more worthy than them both. Having spoken now of the King and the law, it remaineth to speak of the privilege and benefit of naturalization it self; and that according to the rules of the law of *England*. Naturalization is best discerned in the degrees whereby the law doth mount and ascend thereunto. For it seemeth admirable unto me, to consider with what a measured hand, and with how true proportions our law doth impart and confer the several degrees of this benefit: the degrees are four.

The first degree of persons (as to this purpose) that the law takes knowledge of, is an alien enemy; that is, such a one as is born under the obeisance of a prince or state that is in hostility with the King of *England*. To this person the law giveth no benefit or protection at all, but if he come into the realm after war proclaimed, or war in fact, he comes at his own peril, he may be used as an enemy: for the law accounts of him, but (as the scripture saith) as of a spy that comes to see the weakness of the land. And so it is in 2 *Ric.* III. fol. 2. Nevertheless, this admitteth a distinction. For if he come with safe conduct, otherwise it is: For then he may not be violated, either in person or goods. But yet he must fetch his justice at the fountain head, for none of the conduit pipes are open to him; he can have no remedy in any of the King's courts; but he must complain himself before the King's privy council: there he shall have a proceeding summary from hour to hour, the cause shall be determined by natural equity, and not by rules of law; and the decree of the council shall be executed by aid of the chancery, as is 13 *Ed.* IV. And this is the first degree.

The second person is an alien friend, that is, such a one as is born under the obeisance of such a King or state as is confederate with the King of *England*, or at least not in war with him. To this person the law allotteth this benefit, that as the law accounts that the hold it hath over him, is but

a tranſitory hold (for he may be an enemy,) ſo the law doth indue him but with a tranſitory benefit, that is, of moveable goods and perſonal actions. But for free-hold, or leaſe, or actions real or mixt, he is not enabled, except it be in *autre droit*. And ſo it is 9 *E.* IV. fol. 7. 19 *E.* IV. fol. 6. 5 *Mar.* and divers other books.

THE third perſon is a denizen, uſing the word properly; (for ſometimes it is confounded with a natural born ſubject.) This is one that is but *ſubditus inſitivus*, or *adoptivus*, and is never by birth, but only by the King's charter, and by no other mean, come he never ſo young into the realm, or ſtay he never ſo long. Manſion or habitation will not indenize him, no, nor ſwearing obedience to the King in a leet, which doth in-law the ſubject; but only (as I ſaid) the King's grace and gift. To this perſon the law giveth an ability and capacity abridged, not in matter, but in time. And as there was a time when he was not ſubject, ſo the law doth not acknowledge him before that time. For if he purchaſe free-hold after his denization, he may take it; but if he have purchaſed any before, he ſhall not hold it: ſo if he have children after, they ſhall inherit; but if he have any before, they ſhall not inherit. So as he is but privileged *a parte poſt*, as the ſchoolmen ſay, and not *a parte ante*.

THE fourth and laſt degree, is a natural born ſubject, which is evermore by birth, or by act of parliament; and he is complete and entire. For in the law of *England* there is *nil ultra*, there is no more ſubdiviſion or more ſubtile diviſion beyond theſe: and therein it ſeemeth to me that the wiſdom of the law (as I ſaid) is to be admired both ways, both becauſe it diſtinguiſheth ſo far, and becauſe it doth not diſtinguiſh farther. For I know that other laws do admit more curious diſtinction of this privilege; for the *Romans* had beſides *jus civitatis*, which anſwereth to naturalization, *jus ſuffragii*. For although a man were naturalized to take lands and inheritance, yet he was not enabled to have a voice at paſſing of laws, or at election of officers. And yet farther they have *jus petitionis*, or *jus honorum*. For though a man had a voice, yet he was not capable of honour and office. But theſe be the deviſes commonly of popular or free eſtates, which are jealous whom they take into their number, and are unfit for monarchies; but by the law of *England* the ſubject that is natural born, hath a capacity or ability to all benefits whatſoever; I ſay capacity or ability: But to reduce *potentiam in actum*, is another caſe. For an earl of *Ireland*, though he be naturalized in *England*, yet hath no voice in parliament of *England*, except he have either a call by writ, or a creation by patent; but he is capable of either. But upon this quadripartite diviſion of the ability of perſons, I do obſerve to your lordſhips three things, being all effectually pertinent to the queſtion in hand.

THE firſt is, that if any man conceive that the reaſons for the *Poſt-nati* might ſerve as well for the *Ante-nati*, he may by the diſtribution which we have made, plainly perceive his error. For the law looketh not back, and therefore cannot by any matter *ex poſt facto*, after birth, alter the ſtate of the birth; wherein no doubt the law hath a grave and profound reaſon; which is this, in few words, *nemo ſubito fingitur*; *aliud eſt naſci*, *aliud fieri*: we indeed more reſpect and affect thoſe worthy gentlemen of *Scotland* whoſe merits and converſations we know: but the law that proceeds upon general reaſon, and looks upon no mens faces, affecteth and privilegeth thoſe which drew their firſt breath under the obeiſance of the King of *England*.

THE ſecond point is, that by the former diſtribution, it appeareth that there be but two conditions by birth, either alien or natural born, (*nam tertium penitus ignoramus.*) It is manifeſt then, that if the *Poſt-nati* of *Scotland* be not natural born, they are alien born, and in no better degree at all than *Flemings*, *French*, *Italians*, *Spaniſh*, *Germans*, and others, which are all at this time alien friends, by reaſon his Majeſty is in peace with all the world.

THE third point ſeemeth to me very worthy the conſideration, which is, that in all the diſtributions of perſons, and the degrees of abilities or capacities, the King's act is all in all, without any manner of reſpect to law or parliament. For it is the King that makes an alien enemy, by proclaiming a war, wherewith the law or parliament intermeddles not. So the King only grants ſafe conducts, wherewith law and parliament intermeddle not. It is the King likewiſe that maketh an alien friend, by concluding a peace, wherewith law and parliament intermeddle not. It is the King that makes a denizen by his charter, abſolutely of his prerogative and power, wherewith law and parliament intermeddle not. And therefore it is ſtrongly to be inferred, that as all theſe degrees depend wholly upon the King's act, and no ways upon law or parliament; ſo the fourth, although it cannot by the King's patent, but by operation of law, yet that the law, in that operation, reſpecteth only the King's perſon, without reſpect of ſubjection to law or parliament. And thus much by way of explanation and inducement; which being all matter in effect confeſſed, is the ſtrongeſt ground-work to that which is contradicted or controverted.

THERE followeth the confutation of the arguments on the contrary ſide.

THAT which hath been materially objected, may be reduced to four heads.

THE firſt is, that the privilege of naturalization followeth allegiance, and that allegiance followeth the kingdom.

THE ſecond is drawn from that common ground, *cum duo jura concurrunt in una perſona, aequum eſt, ac ſi eſſent in duobus*; a rule, the words whereof are taken from the civil law; but the matter of it is received in all laws; being a very line or rule of reaſon, to avoid confuſion.

THE third conſiſteth of certain inconveniencies conceived to enſue of this general naturalization, *ipſo jure*.

THE fourth is not properly an objection, but a pre-occupation of an objection or proof on our part, by a diſtinction deviſed between countries devolute by deſcent, and acquired by conqueſt.

FOR the firſt, it is not amiſs to obſerve that thoſe which maintain this new opinion, whereof there is *altum ſilentium* in our books of law, are not well agreed in what form to utter and expreſs that: for ſome ſaid that allegiance hath reſpect to the law, ſome to the crown, ſome to the kingdom, ſome to the body politick of the King; ſo there is confuſion of tongues amongſt them, as it commonly cometh to paſs in opinions that have their foundations in ſubtilty and imagination of man's wit, and not in the ground of nature. But to leave their words, and to come to their proofs, they endeavour to prove this conceit, by three manner of proofs: firſt, by reaſon; then, by certain inferences out of ſtatutes; and laſtly, by certain book-caſes, mentioning and reciting the forms of pleadings.

THE reaſon they bring is this; that naturalization is an operation of the law of *England*; and ſo indeed it is, that may be the true *genus* of it.

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THEN they add, (that granted) that the law of *England* is of force only within the kingdom and dominions of *England*, and cannot operate, but where it is in force. But the law is not in force in *Scotland*, therefore that cannot endure this benefit of naturalization by a birth in *Scotland*.

THIS reason is plausible and sensible, but extremely erroneous. For the law of *England*, for matters of benefit, or forfeitures in *England*, operateth over the world. And because it is truly said that *respublica continetur poena, & praemio*; I will put a case or two of either.

IT is plain that if a subject of *England* had conspired the death of the King in foreign parts, it was by the common law of *England*, treason. How prove I that? By the statute of 35 *H.* VIII. *cap.* 2. wherein you shall find no words at all of making any new case of treason which was not treason before, but only of ordaining a form of trial, *ergo* it was treason before: And if so, then the law of *England* works in foreign parts. So of contempts, if the King send his privy seal to any subject beyond the seas, commanding him to return, and he disobey, no man will doubt but there is a contempt, and yet the fact enduring the contempt was committed in foreign parts.

THEREFORE the law of *England* doth extend to acts or matters done in foreign parts. So of reward, privilege or benefit, we need seek no other instance than the instance in question; for I will put you a case that no man shall deny, where the law of *England* doth work and confer the benefit of naturalization upon a birth neither within the dominions of the kingdom, nor King of *England*. By the statute of 25 *E.* III. which, if you will believe *Hussey*, is but a declaration of the common law, all children born in any parts of the world, if they be of *English* parents, continuing at that time as liege subjects to the King, and having done no act to forfeit the benefit of their allegiance, are *ipso facto* naturalized. Nay, if a man look narrowly into the law in this point, he shall find a consequence that may seem at the first strange, but yet cannot well be avoided; which is, that if divers families of *Englishmen* and women plant themselves at *Middleborough*, or at *Roan*, or at *Lisbon*, and have issue, and their descendants do intermarry amongst themselves, without any intermixture of foreign blood; such descendants are naturalized to all generations: for every generation is still of liege parents, and therefore naturalized; so as you may have whole tribes and lineages of *English* in foreign countries.

AND therefore it is utterly untrue that the law of *England* cannot operate or confer naturalization, but only within the bounds of the dominions of *England*.

TO come now to their inferences upon statutes; the first is out of this statute which I last recited. In which statute it is said, that in four several places there are words, born within the allegiance of *England*; or again born without the allegiance of *England*, which (say they) applies the allegiance to the kingdom, and not to the person of the King. To this the answer is easy; for there is no trope of speech more familiar than to use the place of addition for the person. So we say commonly the line of *York*, or the line of *Lancaster*, for the lines of the duke of *York*, or the duke of *Lancaster*.

SO we say the possessions of *Somerset* or *Warwick*, intending the possessions of the dukes of *Somerset*, or earls of *Warwick*. So we see earls sign, *Salisbury*, *Northampton*, for the earls of *Salisbury* or *Northampton*. And in the very same manner the statute speaks, allegiance of *England*, for allegiance

giance of the King of *England*. Nay more, if there had been no variety in the penning of that ſtatute, this collection had had a little more force; for thoſe words might have been thought to have been uſed of purpoſe, and in propriety; but you may find in three other ſeveral places of the ſame ſtatute, allegiance and obeiſance of the King of *England*, and eſpecially in the material and concluding place, that is to ſay, children whoſe parents were at the time of their birth at the faith and obeiſance of the King of *England*; ſo that it is manifeſt by this indifferent and promiſcuous uſe of both phraſes, the one proper, the other improper, that no man can ground any inference upon theſe words, without danger of cavillation.

The ſecond ſtatute out of which they infer, is a ſtatute made in 32 *Henr.* VIII. touching the policy of ſtrangers and tradeſmen within this realm. For the parliament finding that they did eat the *Engliſhmen* out of trade, and that they entertained no apprentices, but of their own nation, did prohibit that they ſhould receive any apprentice, but the King's ſubjects. In which ſtatute is ſaid, that in nine ſeveral places there is to be found this context of words, aliens born out of the King's obedience; which is pregnant (ſay they) and doth imply that there be aliens born within the King's obedience. Touching this inference, I have heard it ſaid, *qui haeret in litera, haeret in cortice*; but this is not worthy the name of *cortex*, it is but *muſcus corticis*, the moſs of the bark. For it is evident that the ſtatute meant to ſpeak clearly and without equivocation, and to a common underſtanding. Now then there are aliens in common reputation, and aliens in preciſe conſtruction of law; the ſtatute then meaning not to comprehend *Iriſhmen*, or *Jerſeymen*, or *Caliſmen*, for explanation ſake, leſt the word alien might be extended to them in a vulgar acceptance, added thoſe further words, born out of the King's obedience: Nay, what if we ſhould ſay, that thoſe words, according to the received laws of ſpeech, are no words of difference or limitation, but of declaration or deſcription of an alien, as if it had been ſaid, with a *videlicet*, aliens; that is, ſuch as are born out of the King's obedience? they cannot put us from that conſtruction. But ſure I am, if the bark make for them, the pith makes for us; for the privilege or liberty which the ſtatute means to deny to aliens of entertaining apprentices, is denied to none born within the King's obedience, call them aliens or what you will. And therefore by their reaſon, a *Poſt-natus* of *Scotland* ſhall by that ſtatute keep what ſtranger apprentices he will, and ſo is put in the degree of an *Engliſh*. The third ſtatute out of which inference is made, is the ſtatute of 14 *E.* III. *cap. ſolo*, which hath been ſaid to be our very caſe; and I am of that opinion too, but directly the other way. Therefore to open the ſcope and purpoſe of that ſtatute: After that the title to the crown of *France* was devolute to K. *E.* III. and that he had changed his ſtyle, changed his arms, changed his ſeal, (as his Majeſty hath done,) the ſubject of *England* (ſaith the ſtatute) conceived a fear that the realm of *England* might become ſubject to the realm of *France*, or to the King as King of *France*. And I will give you the reaſons of the double fear, that it ſhould become ſubject to the realm of *France*. They had this reaſon of fear: *Normandy* had conquered *England*, *Normandy* was feudal of *France*, therefore becauſe the ſuperior ſeigniory of *France* was now united in right with the tenancy of *Normandy*, and that *England*, in regard of the conqueſt, might be taken as a perquiſite to *Normandy*, they had probable reaſon to fear that the kingdom of *England* might be drawn to be ſubject to the realm of *France*. The other fear that *England* might become ſubject to the King as

King of *France*, grew no doubt of this foreſight, that the Kings of *England* might be like to make their manſion and ſeat of their eſtate in *France*, in regard of the climate, wealth, and glory of that kingdom; and thereby the kingdom of *England* might be governed by the King's mandates and precepts iſſuing, as from the King of *France*. But they will ſay, whatſoever the occaſion was, here you have the difference authoriſed of ſubjection to a King generally, and ſubjection to a King as King of a certain Kingdom: but to this I give an anſwer three-fold:

First, it preſſeth not the queſtion; for doth any man ſay that a *Poſtnatus* of *Scotland* is naturalized in *England*, becauſe he is a ſubject of the King, as King of *England*? No, but generally becauſe he is the King's ſubject.

Secondly, The ſcope of this law is to make a diſtinction between crown and crown; but the ſcope of their argument is to make a difference between crown and perſon. Laſtly, this ſtatute (as I ſaid) is our very caſe retorted againſt them; for this is a direct ſtatute of ſeparation, which preſuppoſeth that the common law had made an union of the crowns in ſome degree, by virtue of the union in the King's perſon: if this ſtatute had not been made to ſtop and croſs the courſe of the common law in that point, as if *Scotland* now ſhould be ſuitors to the King, that an act might paſs to like effect, and upon like fear. And therefore if you will make good your diſtinction in this preſent caſe, ſhew us a ſtatute for that. But I hope you can ſhew no ſtatute of ſeparation between *England* and *Scotland*. And if any man ſay that this was a ſtatute declaratory of the common law, he doth not mark how that is penned: for after a kind of hiſtorical declaration in the preamble, that *England* was never ſubject to *France*, the body of the act is penned thus: The King doth grant and eſtabliſh; which are words merely introductive *novae legis*, as if the King gave a charter of franchiſe, and did inveſt by a donative, the ſubjects of *England* with a new privilege or exemption, which by the common law they had not.

To come now to the book-caſes which they put; which I will couple together, becauſe they receive one joint anſwer.

The firſt is 42 *E.* III. *fol.* where the book ſaith, exception was taken that the plaintiff was born in *Scotland* at *Roſs*, out of the allegiance of *England*.

The next is 22 *H.* VI. *fol.* 38. *Adrian's* caſe; where it is pleaded that a woman was born at *Bruges*, out of the allegiance of *England*.

The third is 13 *Eliz. Dyer*, *fol.* 300. where the caſe begins thus: *Doctor Story qui notorie dignoſcitur eſſe ſubditus regni Angliae.* In all theſe three (ſay they) that is pleaded that the party is ſubject of the kingdom of *England*, and not of the King of *England*.

To theſe books I give this anſwer, that they be not the pleas at large, but the words of the reporter, who ſpeaks compendiouſly and narratively, and not according to the ſolemn words of the pleading. If you find a caſe put, that it is pleaded a man was ſeized in fee-ſimple, you will not infer upon that, that the words of the pleading were in *in feodo ſimplici*, but *ſibi & haeredibus ſuis*. But ſhew me ſome precedent of a pleading at large, of *natus ſub ligeantia regni Angliae*; for whereas Mr. *Walter* ſaid that pleadings are variable in this point, he would fain bring it to that; but there is no ſuch matter; for the pleadings are conſtant and uniform in this point: they may vary in the word *fides*, or *ligeantia*, or *obedientia*, and ſome other circumſtances; but in the form of *regni* and *regis* they vary not: neither can there,

there, as I am perſuaded, be any one inſtance ſhewed forth to the contrary. See 9 *Eliz.* 4. *Baggot's Aſſize*, *fol.* 7. where the pleading at large is entred in the book; there you have *alienigena natus extra ligeantiam domini regis Angliae.* See the precedents in the book of entries, *Pl.* 7. and two other places; for there be no more: and there you ſhall find ſtill *ſub ligeantia domini regis*, or *extra ligeantiam domini regis.* And therefore the forms of pleading, which are things ſo reverend, and are indeed towards the reaſons of the law, as *palma*, and *pugnus*, containing the reaſon of the law, opened or unfolded, or diſplayed, they make all for us. And for the very words of reporters in books, you muſt acknowledge and ſay, *ilicet obruimur numero.* For you have 22 *Aſſ. Pl.* 25. 27 *Aſſ.* the *Prior of* Shells *caſe*, *Pl.* 48. 14 *H.* IV. *fol.* 19. 3 *H.* VI. *fol.* 35. 6 *H.* VIII. in my Lord *Dyer*, *fol.* 2. In all theſe books, the very words of the reporters have the allegiance of the King, and not the allegiance of *England.* And the book in the 24 *Eliz.* 3. which is your beſt book, although while it is toſſed at the bar, you have ſometimes the word allegiance of *England*, yet when it comes to *Thorp*, chief juſtice, to give the rule, he ſaith, we will be certified by the roll, whether *Scotland* be within the allegiance of the King. Nay, that farther form of pleading beateth down your opinion. That it ſufficeth not to ſay that he is born out of the allegiance of the King, and ſtay there, but he muſt ſhew in the affirmative, under the allegiance of what King or ſtate he was born. The reaſon whereof cannot be, becauſe it may appear whether he be a friend or an enemy, for that in a real action is all one: nor it cannot be becauſe iſſue ſhall be taken thereupon; for the iſſue muſt ariſe on the other ſide upon *indigena* pleaded and traverſed. And therefore it can have no other reaſon, but to apprize the court more certainly, that the country of the birth is none of thoſe that are ſubject to the King. As for the trial, that it ſhould be impoſſible to be tried, I hold it not worth the anſwering; for the *venire facias* ſhall go either where the natural birth is laid, although it be but by fiction, or if it be laid according to the truth, it ſhall be tried where the action is brought, otherwiſe you fall upon a main rock, that breaketh your argument in pieces; for how ſhould the birth of an *Iriſhman* be tried, or of a *Jerſeyman?* Nay, how ſhould the birth of a ſubject be tried, that is born of *Engliſh* parents in *Spain* or *Florence*, or any part of the world? For to all theſe, the like objection of trial may be made, becauſe they are within no counties, and this receives no anſwer. And therefore I will now paſs on to the ſecond main argument.

It is a rule of the civil law, ſay they, *cum duo jura*, &c. when two rights do meet in one perſon, there is no confuſion of them, but they remain ſtill in eye of law diſtinct, as if they were in ſeveral perſons, and they bring examples of one man biſhop of two ſees, or one perſon that is rector of two churches. They ſay, this unity in the biſhop or the rector doth not create any privity between the pariſhioners or dioceſeners, more than if there were ſeveral biſhops, or ſeveral parſons. This rule I allow (as was ſaid) to be a rule not of the civil law only, but of common reaſon, but receiveth no forced or coined, but a true and ſound diſtinction or limitation, which is, that it evermore faileth and deceiveth in caſes where there is any vigour or operation of the natural perſon; for generally in corporations the natural body is but *ſuffulcimentum corporis corporati*, it is but as a ſtock to uphold and bear out the corporate body, but otherwiſe it is in the caſe of the crown, as ſhall be manifeſtly proved in due place. But to ſhew that this rule receiveth this diſtinction, I will put but two caſes: the ſtatute of the 21 *H.* VIII.

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ordaineth that a marquefs may retain fix chaplains qualified, a lord treafurer of *England* four, a privy counfellor three. The Lord Treafurer *Paulet* was marquefs of *Winchefter*, Lord Treafurer of *England* and Privy Counfellor all at once. Queftion was, whether he fhould qualify thirteen chaplains? Now by the rule *cum duo jura* he fhould; but adjudged he fhould not. And the reafon was becaufe the attendance of chaplains concerned and refpected his natural perfon; he had but one foul, though he had three offices. The other cafe which I will put is the cafe of homage: a man doth homage to his lord for a tenancy held of the manor of *Dale*; there defcendeth unto him afterwards a tenancy held of the manor of *Sale*, which manor of *Sale* is likewife in the hands of the fame lord. Now by the rule *cum duo jura*, he fhould do homage again, two tenancies and two feigniories, though but one tenant and one lord, *aequum eft ac fi effet in duobus*: But ruled that he fhould not do homage again: nay in the cafe of the King he fhall not pay a fecond refpect of homage, as upon grave and deliberate confideration it was refolved, 24 *Hen.* VIII. and *ufus fcaccarii*, as is there faid accordingly. And the reafon is no other but becaufe when a man is fworn to his lord he cannot be fworn over again: he hath but one confcience, and the obligation of this oath trencheth between the natural perfon of the tenant and the natural perfon of the lord. And certainly the cafe of homage and tenure, and of homage liege, which is one cafe, are things of a near nature, fave that the one is much inferior to the other; but it is good to behold thefe great matters of ftate in cafes of lower element, as the eclipfe of the fun is ufed to be in a pail of water.

The third main argument containeth certain fuppofed inconveniencies, which may enfue of a general naturalization *ipfo jure*, of which kind three have been efpecially remembred.

The firft is the lofs of profit to the King upon letters of denization and purchafes of aliens.

The fecond is the concourfe of *Scotfmen* into this kingdom, to the infeebling of that realm of *Scotland* in people, and the impoverifhing of this realm of *England* in wealth.

The third is, that the reafon of this cafe ftayeth not within the compafs of the prefent cafe; for although it were fome reafon that *Scotfmen* were naturalized, being people of the fame ifland and language, yet the reafon which we urge, which is, that they are fubject to the fame King, may be applied to perfons every way more eftranged from us than they are; as if in future time in the King's defcendants, there fhould be a match with *Spain*, and the dominions of *Spain* fhould be united with the crown of *England*, by one reafon (fay they) all the *Weft-Indies* fhould be naturalized; which are people not only *alterius foli*, but *alterius coeli*. To thefe conceits of inconvenience, how eafy it is to give anfwer, and how weak they are in themfelves, I think no man that doth attentively ponder them, can doubt; for how fmall revenue can arife of fuch denizations, and how honourable it were for the King to take efcheats of his fubjects, as if they were foreigners (for feizure of aliens lands are in regard the King hath no hold or command of their perfons and fervices) every one may perceive. And for the confluence of *Scotfmen*, I think we all conceive the fpring-tide is paft at the King's firft coming in. And yet we fee very few families of them throughout the cities and boroughs of *England*. And for the naturalizing of the *Indies* we can readily help that, when the cafe comes; for we can make an act of parliament of feparation if we like not their confort. But thefe being

ing reaſons politick, and not legal, and we are not now in parliament, but before a judgment ſeat) I will not meddle with them, eſpecially ſince I have one anſwer which avoids and confounds all their objections in law; which is, that the very ſelf-ſame objections do hold in countries purchaſed by conqueſt. For in ſubjects obtained by conqueſt, it were more profit to indenizate by the poll; in ſubjects obtained by conqueſt, they may come in too faſt. And if King *Henry* VII. had accepted the offer of *Chriſtopher Columbus*, whereby the crown of *England* had obtained the *Indies* by conqueſt or occupation, all the *Indies* had been naturalized by the confeſſion of the adverſe part. And therefore ſince it is confeſſed, that ſubjects obtained by conqueſt are naturalized, and that all theſe objections are common and indifferent, as well to caſe of conqueſt as caſe of deſcent, theſe objections are in themſelves deſtroyed.

And therefore to procced now to overthrow that diſtinction of deſcent and conqueſt. *Plato* ſaith well, the ſtrongeſt of all authorities is, if a man can allege the authority of his adverſaries againſt himſelf, we do urge the confeſſion of the other ſide, that they confeſſed the *Iriſh* are naturalized; that they confeſs the ſubjects of the iſles of *Jerſey* and *Guernſey*, and *Berwick* to be naturalized, and the ſubjects of *Calais* and *Tournay* when they were *Engliſh* were naturalized; as you may find in the 5 *E.* VI. in *Dyer*, upon the queſtion put to the judges by Sir *Nicholas Bacon*, Lord Keeper.

To avoid this, they fly to a difference, which is new coined, and is (I ſpeak not to the diſadvantage of the perſons that uſe it; for they are driven to it *tanquam ad ultimum refugium*; but the difference itſelf;) it is, I ſay, full of ignorance and error. And therefore to take a view of the ſupports of this difference, they allege four reaſons.

The firſt is, that countries of conqueſt are made parcel of *England*; becauſe they are acquired by the arms and treaſure of *England*. To this I anſwer, that it were a very ſtrange argument, that if I wax rich upon the manor of *Dale*, and upon the revenue thereof purchaſe a cloſe by it, that it ſhould make that parcel of the manor of *Dale*. But I will ſet this new learning on ground with a queſtion or caſe put. For I oppoſe them that hold this opinion with this queſtion, if the King ſhould conquer any foreign country by an army compounded of *Engliſhmen* and *Scotſmen*, as it is like whenſoever wars are, ſo it will be, I demand whether this country conquered ſhall be naturalized both in *England* and *Scotland*, becauſe it was purchaſed by the joint arms of both? And if yea, whether any man will think it reaſonable, that ſuch ſubjects be naturalized in both kingdoms; the one kingdom not being naturalized towards the other? Theſe are the intricate conſequences of conceits.

A second reaſon they allege is, that countries won by conqueſt become ſubject to the laws of *England*, which countries patrimonial are not, and that the law doth draw the allegiance, and allegiance naturalization.

But to the major propoſition of that argument, touching the dependency of allegiance upon law, ſomewhat hath been already ſpoken, and full anſwer ſhall be given when we come to it. But in this place it ſhall ſuffice to ſay, that the minor propoſition is falſe; that is, that the laws of *England* are not ſuperinduced upon any country by conqueſt; but that the old laws remain until the King by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be utterly repugnant, and differing from the laws of *England*. And hereof many ancient precedents and records may be ſhewed, that the reaſon why *Ireland* is ſubject to the laws of *England* is not *ipſo jure* upon conqueſt, but grew by a charter

of King *John*; and that extended but to ſo much as was then in the King's poſſeſſion; for there are records in the time of King *E.* I. and II. of divers particular grants to ſundry ſubjects of *Ireland* and their heirs, that they might uſe and obſerve the laws of *England*.

The third reaſon is, that there is a politick neceſſity of intermixture of people in caſe of ſubjection by conqueſt, to remove alienations of mind, and to ſecure the ſtate, which holdeth not in caſe of deſcent. Here I perceive Mr. *Walter* hath read ſomewhat in matter of ſtate; and ſo have I likewiſe; though we may both quickly loſe our ſelves in a cauſe of this nature. I find by the beſt opinions, that there be two means to aſſure and retain in obedience countries conquered, both very differing, almoſt in extremes, the one towards the other.

The one is by colonies, and intermixture of people, and tranſplantation of families, which Mr. *Walter* ſpoke of; and it was indeed the *Roman* manner: but this is like an old relique, much reverenced, and almoſt never uſed. But the other, which is the modern manner, and almoſt wholly in practice and uſe, is by gariſons and citadels, and liſts or companies of men of war, and other like matters of terror and bridle.

To the firſt of theſe (which is little uſed) it is true that naturalization doth conduce, but to the later it is utterly oppoſite, as putting too great pride and means to do hurt in thoſe that are meant to be kept ſhort and low. And yet in the very firſt caſe of the *Roman* proceeding, naturalization did never follow by conqueſt, during all the growth of the *Roman* empire; but was ever conferred by charters or donations, ſometimes to cities and towns, ſometimes to particular perſons, and ſometimes to nations, until the time of *Adrian* the Emperor, and the law in *Orbe romano:* and that law or conſtitution is not referred to title of conqueſt and arms only, but to all other titles; as by the donation and teſtament of Kings, by ſubmiſſion and dedition of ſtates, or the like: ſo as this difference was as ſtrange to them as to us. And certainly I ſuppoſe it will ſound ſtrangely in the hearing of foreign nations, that the law of *England* ſhould *ipſo facto* naturalize ſubjects of conqueſts, and ſhould not naturalize ſubjects which grow unto the King by deſcent; that is, that it ſhould confer the benefit and privilege of naturalization upon ſuch as cannot at the firſt but bear hatred and rancour to the ſtate of *England*, and have had their hands in the blood of the ſubjects of *England*, and ſhould deny the like benefit to thoſe that are conjoined with them by a more amiable mean; and that the law of *England* ſhould confer naturalization upon ſlaves and vaſſals (for people conquered are no better in the beginning) and ſhould deny it to freemen: I ſay it will be marvelled at abroad, of what complexion the laws of *England* be made that breedeth ſuch differences. But there is little danger of ſuch ſcandals; for this is a difference that the law of *England* never knew.

The fourth reaſon of this difference is, that in caſe of conqueſt the territory united can never be ſeparated again. But in caſe of deſcent, there is a poſſibility; if his Majeſty's line ſhould fail, the kingdoms may ſever again to their reſpective heirs; as it is in the caſe of 8 *Hen.* VI. where it is ſaid, that if land deſcend to a man from the anceſtor, on the part of his father, and a rent iſſuing out of it from an anceſtor, on the part of the mother; if the party die without iſſue, the rent is revived. As to this reaſon I know well the continuance of the King's line is no leſs dear to thoſe that allege the reaſon than to us that confute it. So as I do not blame the paſſing of the reaſon: but it is anſwered with no great difficulty; for firſt the law doth ne-

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ver reſpect remote and foreign poſſibilities, as notably appeared in the great caſe between Sir *Hugh Cholmley* and *Hculford* in the exhequer, where one in the remainder, to the end to bridle tenant in tail from ſuffering a common recovery, granted his remainder to the King; and becauſe he would be ſure to have it out again without charge or trouble when his turn was ſerved, he limited it to the King during the life of tenant in tail. Queſtion grew whether this grant of remainder were good, yea or no. And it was ſaid to be frivolous and void, becauſe it could never by any poſſibility execute; for tenant in tail cannot ſurrender; and if he died, the remainder likewiſe ceaſed. To which it was anſwered, that there was a poſſibility that it might execute, which was thus: Put caſe, that tenant in tail ſhould enter into religion, having no iſſue; then the remainder ſhould execute, and the King ſhould hold the land during the natural life of tenant in tail, notwithſtanding his civil death. But the court *una voce* exploded this reaſon, and ſaid, that monaſteries were down, and entries into religion gone, and they muſt be up again ere this could be; and that the law did not reſpect ſuch remote and foreign poſſibilities; and ſo we may hold this for the like: for I think we all hope, that neither of thoſe days ſhall ever come, either for monaſteries to be reſtored, or for the King's line to fail; but the true anſwer is, that the poſſibility ſubſequent, remote or not remote, doth not alter the operation of law for the preſent. For that ſhould be, as if in caſe of the rent which you put, you ſhould ſay, that in regard that the rent may be ſevered it ſhould be ſaid to be *in eſſe* in the mean time, and ſhould be grantable, which is clearly otherwiſe. And ſo in the principal caſe, if that ſhould be (which God of his goodneſs forbid) *ceſſante cauſâ ceſſat effectus*, the benefit of naturalization for the time to come is diſſolved. But that altereth not the operation of the law; *rebus ſic ſtantibus*. And therefore I conclude, that this difference is but a deviſe full of weakneſs and ignorance; and that there is one and the ſame reaſon of naturalizing ſubjects by deſcent, and ſubjects by conqueſt; and that is the union in the perſon of the King; and therefore that the caſe of *Scotland* is as clear as that of *Ireland*, and they that grant the one cannot deny the other. And ſo I conclude the ſecond part touching confutation.

To proceed therefore to the proofs of our part, your lordſhips cannot but know many of them muſt be already ſpent in the anſwer which we have made to the objections. For *corruptio unius, generatio alterius*, holds as well in arguments as in nature, the deſtruction of an objection begets a proof. But nevertheleſs, I will avoid all iteration, leſt I ſhould ſeem either to diſtract your memories, or to abuſe your patience; but will hold my ſelf only to theſe proofs, which ſtand ſubſtantially of themſelves, and are not intermixed with matter of confutation. I will therefore prove unto your lordſhips, that the *poſt-natus* of *Scotland* is by the law of *England* natural, and ought ſo to be adjudged by three courſes of proof.

1. First, upon point of favour of law.

2. Secondly, upon reaſons and authorities of law.

3. And laſtly, upon former precedents and examples.

1. Favour of law: what mean I by that? The law is equal, and favoureth not: it is true, not perſons, but things or matters it doth favour. Is it not a common principle, that the law favoureth three things, life, liberty, and dower? And what is the reaſon of this favour? 'Tis becauſe our law is grounded upon the law of nature. And theſe three things do flow from the law of nature, preſervation of life natural, liberty, which every beaſt or bird ſeeketh

ſeeketh and affecteth naturally, the ſociety of man and wife, whereof dower is the reward natural. It is well, doth the law favour liberty ſo highly, as a man ſhall enfranchiſe his bondman when he thinketh not of it, by granting to him lands or goods? And is the reaſon of it *quia natura omnes homines erant liberi?* And that ſervitude or villenage doth croſs and abridge the law of nature? And doth not the ſelf-ſame reaſon hold in the preſent caſe? For my lords, by the law of nature all men in the world are naturalized one towards another; they were all made of one lump of earth, of one breath of God; they had the ſame common parents: nay, at the firſt they were, as the ſcripture ſheweth, *unius labii*, of one language, until the curſe; which curſe (thanks be to God) our preſent caſe is exempted from. It was civil and national laws that brought in theſe words, and differences of *cives* and *exterus*, alien and native. And therefore becauſe they tend to abridge the law of nature, the law favoureth not them, but takes them ſtrictly; even as our law hath an excellent rule, that cuſtoms of towns and boroughs ſhall be taken and conſtrued ſtrictly and preciſely, becauſe they do abridge and derogate from the law of the land. So by the ſame reaſon all national laws whatſoever are to be taken ſtrictly and hardly in any point, wherein they abridge, and derogate from the law of nature. Whereupon I conclude that your lordſhips cannot judge the law for the other ſide, except the caſe be *luce clarius*. And if it appear to you but doubtful, as I think no man in his right ſenſes but will yield it to be at leaſt doubtful, then ought your lordſhips (under your correction be it ſpoken) to pronounce for us, becauſe of the favour of the law. Furthermore as the law of *England* muſt favour naturalization, as a branch of the law of nature, ſo it appears manifeſtly, that it doth favour it accordingly. For is it not much to make a ſubject naturalized? By the law of *England*, it ſhould ſuffice, either place or parents, if he be born in *England* it is no matter though his parents be *Spaniards*, or what you will. On the other ſide, if he be born of *Engliſh* parents, it ſkilleth not though he be born in *Spain*, or in any other place of the world. In ſuch ſort doth the law of *England* open her lap to receive in people to be naturalized, which indeed ſheweth the wiſdom and excellent compoſition of our law. And that it is the law of a warlike and magnanimous nation, fit for empire. For look, and you ſhall find that ſuch kind of eſtates have been ever liberal in point of naturalization: whereas merchant-like and envious eſtates have been otherwiſe. For the reaſons of law joined with authorities, I do firſt obſerve to your lordſhips, that our aſſertion or affirmation is ſimple and plain: that it ſufficeth to naturalization, that there be one King, and that the party be *natus ad fidem regis*, agreeable to the definition of *Littleton*, which is, alien is he which is born out of the allegiance of our lord the King. They of the other ſide ſpeak of reſpects, and *quoad* and *quatenus*, and ſuch ſubtilties and diſtinctions. To maintain therefore our aſſertion, I will uſe three kinds of proofs.

The firſt is, that allegiance cannot be applied to the law or kingdom, but to the perſon of the King, becauſe the allegiance of the ſubject is more large and ſpacious, and hath a greater latitude and comprehenſion than the law or the kingdom. And therefore it cannot be a dependency of that, without the which it may of itſelf ſubſiſt.

The ſecond proof which I will uſe, is, that the natural body of the King hath an operation and influence into his body politick, as well as his body politick hath upon his body natural; and therefore that although his body politick of King of *England*, and his body politick of King of *Scotland* be

be ſeveral and diſtinct, yet nevertheleſs his natural perſon, which is one, hath an operation upon both, and createth a privity between them.

And the third proof is the binding text of five ſeveral ſtatutes.

For the firſt of theſe I ſhall make it manifeſt, that the allegiance is of a greater extent and dimenſion than laws or kingdom, and cannot conſiſt by the laws merely; becauſe it began before laws, it continueth after laws, and it is in vigour where laws are ſuſpended and have not their force. That it is more ancient than law appeareth by that which was ſpoken in the beginning by way of inducement, where I did endeavour to demonſtrate, that the original age of kingdoms was governed by natural equity, that Kings were more ancient than law-givers, that the firſt ſubmiſſions were ſimple, and upon confidence to the perſon of Kings, and that the allegiance of ſubjects to hereditary monarchies can no more be ſaid to conſiſt by laws, than the obedience of children to parents.

That allegiance continueth after laws, I will only put the caſe, which was remembred by two great judges in a great aſſembly, the one of them now with God: which was; that if a King of *England* ſhould be expulſed his kingdom, and ſome particular ſubjects ſhould follow him in flight or exile in foreign parts, and any of them there ſhould conſpire his death; that upon his recovery of his kingdom, ſuch a ſubject might by the law of *England* be proceeded with for treaſon committed and perpetrated at what time he had no kingdom, and in place where the law did not bind.

That allegiance is in vigour and force where the power of law hath a ceſſation appeareth notably in time of wars, for *ſilent leges inter arma*. And yet the ſovereignty and imperial power of the King is ſo far from being then extinguiſhed or ſuſpended, as contrariwiſe it is raiſed and made more abſolute; for then he may proceed by his ſupreme authority, and martial law, without obſerving formalities of the laws of his kingdom. And therefore whoſoever ſpeaketh of laws, and the King's power by laws, and the ſubjects obedience or allegiance to laws, ſpeak but of one half of the crown. For *Bracton* out of *Juſtinian* doth truly define the crown to conſiſt of laws and arms, power civil and martial, with the latter whereof the law doth not intermeddle; ſo as where it is much ſpoken, that the ſubjects of *England* are under one law, and the ſubjects of *Scotland* are under another law, it is true at *Edinburgh* or *Stirling*, or again in *London* or *York*; but if *Engliſhmen* and *Scotſmen* meet in an army royal before *Calais*, I hope then they are under one law. So likewiſe not only in time of war, but in time of peregrination: If a King of *England* travel or paſs through foreign territories, yet the allegiance of his ſubjects followeth him; as appeareth in that notable caſe which is reported in *Fleta*, where one of the train of King *Edward* I. as he paſt through *France* from the *Holy Land*, imbezelled ſome ſilver plate at *Paris*, and juriſdiction was demanded of this crime by the *French* King's counſel at law, *ratione ſoli*, and demanded likewiſe by the officers of King *Edward ratione perſonae*; and after much ſolemnity and conteſtation and interpleading, it was ruled and determined for King *Edward*, and the party tried and judged before the knight marſhal of the King's houſe, and hang'd after the *Engliſh* law, and execution in *St. Germains* meadows. And ſo much for my firſt proof.

For my ſecond main proof, that is drawn from the true and legal diſtinction of the King's ſeveral capacities; for they that maintain the contrary opinion do in effect deſtroy the whole force of the King's natural capacity, as if it were drowned and ſwallowed up by his politick. And therefore I

will firſt prove to your lordſhips, that his two capacities are in no ſort confounded. And ſecondly, that as his capacity politick worketh ſo upon his natural perſon, as it makes it differ from all other the natural perſons of his ſubjects; ſo *e converſo*, his natural body worketh ſo upon his politick, as the corporation of the crown utterly differeth from all other corporations within the realm.

For the firſt I will vouch you the very words which I find in that notable caſe of the duchy, where the queſtion was, whether the grants of King *Edward* VI. for duchy lands ſhould be avoided in points of nonage. The caſe, as your lordſhips know well, is reported by Mr. *Plowden* as the general reſolution of all the judges of *England*, and the King's learned counſel, *Rouſwell* the ſollicitor only except; there I find the ſaid words, comment. fol. 215. There is in the King not a body natural alone, nor a body politick alone, but a body natural and politick together: *corpus corporatum in corpore naturali, & corpus naturale in corpore corporato.* The like I find in the great caſe of the Lord *Berkley* ſet down by the ſame reporter, comment. fol. 234. Though there be in the King two bodies, and that thoſe two bodies are conjoined, yet are they by no means confounded the one by the other.

Now then to ſee the mutual and reciprocal intercourſe, as I may term it, or influence, or communication of qualities that theſe bodies have one upon the other: The body politick of the crown indueth the natural perſon of the King with theſe perfections. That the King in law ſhall never be ſaid to be within age: that his blood ſhall never be corrupted; and that if he were attainted before, the very aſſumption of the crown purgeth it. That the King ſhall not take but by matter of record, although he take in his natural capacity as upon a gift in tail. That his body in law ſhall be ſaid to be as it were immortal; for there is no death of the King in law, but a demiſe, as it is termed: with many other the like privileges and differences from other natural perſons too long to rehearſe, the rather becauſe the queſtion laboureth not in that part. But on the contrary part let us ſee what operations the King's natural perſon hath upon his crown and body politick: of which the chiefeſt and greateſt is, that it cauſeth the crown to go by deſcent, which is a thing ſtrange, and contrary to the courſe of all corporations, which evermore take in ſucceſſion, and not by deſcent; for no man can ſhew me in all the corporations of *England*, of what nature ſoever, whether they conſiſt of one perſon, or of many; or whether they be temporal or eccleſiaſtical, any one takes to him and his heirs, but all to him and his ſucceſſors. And therefore here you may ſee what a weak courſe that is, to put caſes of biſhops and parſons, and the like, and to apply them to the crown. For the King takes to him and his heirs in the manner of a natural body, and the word ſucceſſors is but ſuperfluous; and where that is uſed, that is ever duly placed after the word heirs, the King, his heirs and ſucceſſors.

Again no man can deny but *uxor & filius ſunt nomina naturae.* A corporation can have no wife, nor a corporation can have no ſon: how is it then that it is treaſon to compaſs the death of the Queen or of the Prince? There is no part of the body politick of the crown in either of them, but it is entirely in the King. So likewiſe we find in the caſe of the Lord *Berkley*, the queſtion was whether the ſtatute of 35 *Henry* VIII. for that part which concerned Queen *Katharine Par*'s jointure were a publick act or no, of which the judges ought to take notice, not being pleaded; and judged a publick act. So the like queſtion came before your lordſhip, my Lord Chancellor, in Serjeant *Heale*'s caſe; whether the ſtatute of 11 *Edward* III. concerning

cerning the intailing of the dukedom of *Cornwall* to the Prince were a publick act or no, and ruled likewise a publick act. Why? No man can affirm but these be operations of law, proceeding from the dignity of the natural person of the King; for you shall never find that another corporation whatsoever of a bishop or master of a college or mayor of *London* worketh any thing in law upon the wife or son of the bishop or the mayor. And to conclude this point, and withal to come near to the case in question, I will shew you where the natural person of the King hath not only an operation in the case of his wife and children, but likewise in the case of his subjects, which is the very question in hand. As for example, I put this case: Can a *Scotsman* who is a subject to the natural person of the King, and not to the crown of *England*; can a *Scotsman*, I say, be an enemy by the law to the subjects of *England*? Or must he not of necessity if he should invade *England* be a rebel and no enemy, not only as to the King, but as to the subject? Or can any letters of mart or repriſal be granted against a *Scotsman* that shall spoil an *Englishman*'s goods at sea? And certainly this case doth press exceeding near the principal case; for it proveth plainly, that the natural person of the King hath such a communication of qualities with his body politick, as it makes the subjects of either kingdom stand in another degree of privity one towards the other, than they did before. And so much for the second proof.

For the five acts of parliament which I spoke of, which are concluding to this question:

The first of them is, that concerning the banishment of *Hugh Spencer* in the time of King *Edward* II. In which act there is contained the charge and accusation whereupon his exile proceeded. One article of which charge is set down in these words: Homage and oath of the subject is more by reason of the crown than by reason of the person of the King. So that if the King doth not guide himself by reason in right of the crown, his lieges are bound by their oath to the crown to remove the King.

By which act doth plainly appear the perilous consequence of this distinction concerning the person of the King and the crown. And yet I do acknowledge justly and ingenuously a great difference between that assertion and this, which is now maintained: for it is one thing to make things distinct, another thing to make them separable, *aliud est distinctio, aliud separatio*; and therefore I assure myself, that those that now use and urge that distinction do as firmly hold, that the subjection to the King's person and to the crown are inseparable, though distinct, as I do. And it is true that the poison of the opinion and assertion of *Spencer* is like the poison of a scorpion, more in the tail than in the body: for it is the inference that they make, which is, that the King may be deposed or removed, that is the treason and disloyalty of that opinion. But by your leave, the body is never a whit the more wholesome meat for having such a tail belonging to it: therefore we see that is *locus lubricus*, an opinion from which a man may easily slide into an absurdity. But upon this act of parliament, I will only note one circumstance more, and so leave it, which may add authority unto it in the opinion of the wisest; and that is, that these *Spencers* were not ancient nobles or great patriots that were charged and prosecuted by upstarts and favourites: for then that might be said, that it was but the action of some flatterers, who use to extol the power of monarchs to be infinite: but it was contrary; a prosecution of those persons being favourites by the nobility, so as the nobility themselves which seldom do subscribe to the opinion of an infinite power of monarchs,

monarchs, yet even they could not endure, but their blood did riſe to hear that opinion, that ſubjection is owing to the crown rather than to the perſon of the King.

The ſecond act of parliament which determined this caſe, is the act of recognition in the firſt year of his Majeſty, wherein you ſhall find, that in two ſeveral places, the one in the preamble, the other in the body of the act, the parliament doth recognize, that theſe two realms of *England* and *Scotland* are under one imperial crown. The parliament doth not ſay under one monarchy or King, which might refer to the perſon, but under one imperial crown, which cannot be applied but to the ſovereign power of regiment comprehending both kingdoms. And the third act of parliament is the act made in the fourth year of his Majeſty's reign, for the abolition of hoſtile laws; wherein your lordſhips ſhall find likewiſe in two places, that the parliament doth acknowledge, that there is an union of theſe two kingdoms already begun in his Majeſty's perſon: So as by the declaration of that act, they have not only one King, but there is an union in inception in the kingdoms themſelves.

These two are judgments in parliament by way of declaration of law, againſt which no man can ſpeak. And certainly theſe are righteous and true judgments to be relied upon; not only for the authority of them, but for the verity of them; for to any that ſhall well and deeply weigh the effects of law upon this conjunction, it cannot but appear, that although *partes integrales* of the kingdom (as the philoſophers ſpeak) ſuch as the laws, the officers, the parliament, are not yet commixed; yet nevertheleſs there is but one, and the ſelf-ſame fountain of ſovereign power depending upon the ancient ſubmiſſion, whereof I ſpake in the beginning; and in that ſenſe the crowns and the kingdoms are truly ſaid to be united.

And the force of this truth is ſuch, that a grave and learned gentleman that defended the contrary opinion, did confeſs thus far: That in ancient times when monarchies (as he ſaid) were but heaps of people without any exact form of policy; that then naturalization and communication of privileges did follow the perſon of the monarch; but otherwiſe, ſince ſtates are reduced to a more exact form: ſo as thus far we did conſent; but ſtill I differ from him in this, that theſe more exact forms wrought by time and cuſtom, and laws, are nevertheleſs ſtill upon the firſt foundation, and do ſerve only to perfect and corroborate the force and bond of the firſt ſubmiſſion, and in no ſort to diſannul or deſtroy it.

And therefore with theſe two acts do I likewiſe couple the act of 14 *Edward* III. which hath been alledged of the other ſide. For by collating of that act with this former too, the truth of that we affirm will the more evidently appear, according unto the rule of reaſon: *oppoſita juxta ſe poſita magis eluceſcunt.* That act of 14 is an act of ſeparation. Theſe two acts formerly recited are acts tending to union. This act is an act that maketh a new law; it is by the words of grant and eſtabliſh. Theſe two acts declare the common law, as it is, being by words of recognition and confeſſion.

And therefore upon the difference of theſe laws you may ſubſtantially ground this poſition: That the common law of *England* upon the adjunction of any kingdom unto the King of *England* doth make ſome degree of union in the crowns and kingdoms themſelves; except by a ſpecial act of parliament they be diſſevered.

Lastly, the fifth act of parliament which I promiſed, is the act made in the 42 of *E.* III. *cap.* 10. which is expreſs deciſion of the point in queſtion.

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The words are, *Item*, (upon the petition put into parliament by the commons,) that infants born beyond the ſeas in the ſeigniories of *Calais*, and elſewhere, within the lands and ſeigniories that pertain to our ſovereign lord the King beyond the ſeas, be as able and inheritable of their heritage in *England*, as other infants born within the realm of *England*, it is accorded that the common law and the ſtatute formerly made, be holden.

Upon this act, I infer thus much; firſt, that ſuch as the petition mentioneth, were naturalized, the practice ſhews; then if ſo, it muſt be either by common law or ſtatute, for ſo the words report: not by ſtatute, for there is no other ſtatute but 25 of *E.* III. and that extends to the caſe of birth out of the King's obedience, where the parents are *Engliſh*; *ergo* it was by the common law, for that only remains. And ſo by the declarations of this ſtatute at the common law, all infants born within the lands and ſeigniories (for I give you the very words again) that pertain to our ſovereign lord the King, it is not ſaid, as are the dominions of *England*, are as able and inheritable of their heritage in *England*, as other infants born within the realm of *England*. What can be more plain? And ſo I leave the ſtatutes, and go to precedents; for though the one do bind more, yet the other ſometimes doth ſatisfy more. For precedents in the producing and uſing of that kind of proof, of all others it behoveth them to be faithfully vouched; for the ſuppreſſing or keeping back of a circumſtance, may change the caſe: and therefore I am determined to urge only ſuch precedents, as are without all colour or ſcruple of exception or objections, even of thoſe objections which I have, to my thinking, fully anſwered and confuted. This is now, by the providence of God, the fourth time that the line and Kings of *England* have had dominions and ſeigniories united unto them as patrimonies, and by deſcent of blood; four unions, I ſay, there have been incluſive with this laſt. The firſt was of *Normandy*, in the perſon of *William*, commonly called the conqueror. The ſecond was of *Gaſcoign*, and *Guienne*, and *Anjou*, in the perſon of King *Henry* II. In his perſon, I ſay, though by ſeveral titles. The third was of the crown of *France*, in the perſon of King *Edward* III. And the fourth of the kingdom of *Scotland*, in his Majeſty. Of theſe I will ſet aſide ſuch as by any cavillation can be excepted unto. Firſt, I will ſet aſide *Normandy*, becauſe it will be ſaid, that the difference of countries accruing by conqueſt, from countries annexed by deſcent in matter of communication of privileges, holdeth both ways; as well of the part of the conquering kingdom, as the conquered. And therefore that although *Normandy* was not conqueſt of *England*, yet *England* was a conqueſt of *Normandy*, and ſo a communication of privileges between them. Again, ſet aſide *France*, for that it will be ſaid, that although the King had a title in blood, and by deſcent, yet that title was executed and recovered by arms, ſo as it is a mixt title of conqueſt and deſcent, and therefore the precedent not ſo clear.

There remains then *Gaſcoigne* and *Anjou*, and that precedent likewiſe I will reduce and abridge to a time to avoid all queſtion. For it will be ſaid of them alſo, that after they were loſt and recovered *in ore gladii*, that the ancient title of blood was extinct; and that the King was in upon his new title by conqueſt: and Mr. *Walter* hath found a book-caſe in 13 *H.* VI. abridged by Mr. *Fitz-Herbert*, in title of protection, *placito* 56. where a protection was caſt, *quia profecturus in Gaſconiam* with the Earl of *Huntingdon*, and challenged becauſe it was not a voyage royal; and the juſtices thereupon requiring the ſight of the commiſſion, which was brought before

them, and purported power to pardon felonies, and treaſon, power to coin money, and power to conquer them that reſiſt: whereby Mr. *Walter* finding the word conqueſt, collected that the King's title at that time was reputed to be by conqueſt; wherein I may not omit to give *obiter* that anſwer, which law and truth provideth, namely, that when any King obtaineth by war a country whereunto he hath right by birth, that he is ever in upon his ancient right, not upon his purchaſe by conqueſt; and the reaſon is, that there is as well a judgment and recovery by war and arms, as by law and courſe of juſtice. For war is a tribunal ſeat, wherein God giveth the judgment, and the trial is by battel, or duel, as in the caſe of trial of private right: and then it follows, that whoſoever cometh in by eviction, comes in his *remitter:* ſo as there will be no difference in countries whereof the right cometh by deſcent, whether the poſſeſſion be obtained peaceably, or by war; but yet nevertheleſs, becauſe I will utterly take away all manner of evaſion, and ſubterfuge, I will yet ſet apart that part of time, in and during the which, the ſubjects of *Gaſcoigne* and *Guienne* might be thought to be ſubdued by a re-conqueſt. And therefore I will not meddle with the prior of *Shellys* caſe, though it be an excellent caſe; becauſe it was in the time of 27 *E.* III. neither will I meddle with any caſes, records, or precedents, in the time of King *H.* V. or King *H.* VI. for the ſame reaſon; but will hold my ſelf to a portion of time, from the firſt uniting of theſe provinces in the time of King *H.* II. until the time of King *John.* At what time thoſe provinces were loſt, and from that time again unto the ſeventeeth year of the reign of King *E.* 2. at what time the ſtatute of *praerogativa regis* was made, which altered the law in the point in hand.

That both in theſe times the ſubjects of *Gaſcoigne* and *Guienne*, and *Anjou*, were naturalized for inheritance in *England* by the laws of *England*, I ſhall manifeſtly prove; and the proof proceeds, as to the former time (which is our caſe,) in a very high degree, *a minore ad majus*, and as we ſay, *a multo fortiori*. For if this privilege of naturalization remained unto them when the countries were loſt, and became ſubjects in poſſeſſion to another King; much more did they enjoy it, as long as they continued under the King's ſubjection.

Therefore to open the ſtate of this point. After theſe provinces were through the perturbations of the ſtate in the unfortunate time of King *John* loſt, and ſevered, the principal perſons which did adhere unto the *French*, were attainted of treaſon, and their eſcheats here in *England* taken and ſeized. But the people that could not reſiſt the tempeſt, when their heads and leaders were revolted, continued inheritable to their poſſeſſions in *England*, and reciprocally the people of *England* inherited and ſucceeded to their poſſeſſions in *Gaſcoigne*, and were both accounted *ad fidem utriuſque regis*, until the ſtatute of *praerogativa regis*, wherein the wiſdom and juſtice of the law of *England* is highly to be commended. For of this law, there are two grounds of reaſon, the one of equity, the other of policy: that of equity was, becauſe the common people were in no fault, but as the ſcripture ſaith in a like caſe, *quid fecerunt oves iſtae?* It was the cowardice and diſloyalty of their governors that deſerved puniſhment, but what had theſe ſheep done? And therefore to have puniſh'd them, and deprived them of their lands and fortunes, had been unjuſt. That of policy was, becauſe if the law had forthwith upon the loſs of the countries by an accident of time, pronounced the people for aliens, it had been a kind of ceſſion of their right, and a diſclaimer in them, and ſo a greater difficulty to recover them. And there-

fore

fore we ſee the ſtatute which altered the law in this point, was made in the time of a weak King, that, as it ſeemed, deſpaired ever to recover his right; and therefore thought better to have a little preſent profit by eſcheats, than the continuance of his claim, and the countenance of his right, by the admitting of them to enjoy their inheritances as they did before.

The ſtate therefore of this point being thus opened, it reſteth to prove our aſſertion that they were naturalized; for the clearing whereof, I ſhall need but to read the authorities, they be ſo direct and pregnant. The firſt is the very text of the ſtatute of *praerogativa regis*. *Rex habebit eſcaetas de terris Normannorum, cujuſcunque feodi fuerint, ſalvo ſervitio, quod pertinet ad capitales dominos feodi illius: & hoc ſimiliter intelligendum eſt, ſi aliqua haereditas deſcendat alicui nato in partibus tranſmarinis, & cujus anteceſſores fuerunt ad fidem regis Franciae, ut tempore regis Johannis, & non ad fidem regis Angliae, ſicut contigit de baronia Monumetae*, &c.

By which ſtatute it appears plainly, that before the time of King *John*, there was no colour of any eſcheat, becauſe they were the King's ſubjects in poſſeſſion, as *Scotland* now is, but only it determines the law from that time forward.

This ſtatute, if it had in it any obſcurity, it is taken away by two lights, the one placed before it, and the other placed after it; both authors of great credit, the one for ancient, the other for late times: the former is *Bracton*, in his *cap. de exceptionibus, lib.* 5. *fol.* 427. and his words are theſe, *Eſt etiam & alia exceptio quae tenenti competit ex perſona petentis, propter defectum nationis, quae dilatoria eſt, & non perimit actionem, ut ſi quis alienigena qui fuerit ad fidem regis Franciae, & actionem inſtituat verſus aliquem, qui fuerit ad fidem regis Angliae, tali non reſpondeatur, ſaltem donec terrae fuerint communes.*

By theſe words it appeareth, that after the loſs of the provinces beyond the ſeas, the naturalization of the ſubjects of thoſe provinces was in no ſort extinguiſhed, but only was in ſuſpenſe during time of war, and no longer; for he ſaith plainly, that the exception which we call plea to the perſon of an alien, was not peremptory, but only dilatory, that is to ſay, during the time of war, and until there were peace concluded, which he terms by theſe words, *donec terrae fuerint communes:* which though the phraſe ſeem ſomewhat obſcure, is expounded by *Bracton* himſelf in his fourth book, fol. 297. to be of peace made and concluded, whereby the inhabitants of *England* and thoſe provinces might enjoy the profits and fruits of their lands in either place *communiter*, that is, reſpectively, or as well the one as the other: ſo as it is clear they were no aliens in right, but only interrupted and debarred of ſuits in the King's courts in time of war.

The authority after the ſtatute, is, that of Mr. *Stamford*, the beſt expoſitor of a ſtatute that hath been in our law; a man of reverend judgment, and excellent order in his writings: his words are in his expoſition upon the branch of the ſtatute which we read before. By this branch it ſhould appear, that at this time men of *Normandy*, *Gaſcoigne*, *Guienne*, *Anjou*, and *Britain*, were inheritable within this realm, as well as *Engliſhmen*, becauſe that they were ſometimes ſubjects to the Kings of *England*, and under their dominion, until King *John*'s time, as is aforeſaid; and yet after his time, thoſe men (ſaving ſuch whoſe lands were taken away for treaſon,) were ſtill inheritable within this realm till the making of this ſtatute, and in the time of peace between the two Kings of *England* and *France*, they were anſwerable within this realm, if they had brought any action for their lands and tenements.

So

So as by theſe three authorities, every one ſo plainly purſuing the other, we conclude that the ſubjects of *Gaſcoigne*, *Guienne*, *Anjou*, and the reſt, from their firſt union by deſcent, until the making of the ſtatute of *prærogativa regis*, were inheritable in *England*, and to be anſwered in the King's courts in all actions, except it were in time of war. Nay more, (which is *de abundanti*,) that when the provinces were loſt, and diſannexed, and that the King was but King *de jure* over them, and not *de facto*; yet nevertheleſs, the privilege of naturalization continued.

There reſteth yet one objection, rather plauſible to a popular underſtanding, than any ways forcible in law or learning, which is a difference taken between the kingdom of *Scotland* and theſe duchies, for that the one is a kingdom, and the other was not ſo; and therefore that thoſe provinces being of an inferior nature, did acknowledge our laws and ſeals, and parliament, which the kingdom of *Scotland* doth not.

This difference was well given over by Mr. *Walter*; for it is plain that a kingdom and abſolute dukedom, or any other ſovereign eſtate, do differ *honore*, and not *poteſtate*: for divers duchies and countries that are now, were ſometimes kingdoms; and divers kingdoms that are now, were ſometimes duchies, or of other inferior ſtyle: wherein we need not travail abroad, ſince we have in our own ſtate ſo notorious an inſtance of the country of *Ireland*, whereof King *H.* VIII. of late time was the firſt that writ himſelf King, the former ſtyle being lord of *Ireland*, and no more; and yet Kings had the ſame authority before, that they have had ſince, and the ſame nation the ſame marks of a ſovereign ſtate, as their parliaments, their arms, their coins, as they now have; ſo as this is too ſuperficial an allegation to labour upon.

And if any do conceive that *Gaſcoigne* and *Guienne* were governed by the laws of *England*: firſt, that cannot be in reaſon; for it is a true ground that whereſoever any prince's title unto any country is by law, he can never change the laws, for that they create his title: and therefore no doubt thoſe duchies retained their own laws; which if they did, then they could not be ſubject to the laws of *England*.

And next, again, the fact or practice was otherwiſe, as appeareth by all conſent of ſtory and record: for thoſe duchies continued governed by the civil law, their trials by witneſſes, and not by jury, their lands teſtamentary, and the like.

Now for the colours that ſome have endeavoured to give, that they ſhould have been ſubordinate to the government of *England*; they were partly weak, and partly ſuch as make ſtrongly againſt them: for as to that, that writs of *habeas corpus* under the great ſeal of *England* have gone to *Gaſcoigne*, it is no manner of proof; for that the King's writs, which are mandatory, and not writs of ordinary juſtice, may go to his ſubjects into any foreign parts whatſoever, and under what ſeal it pleaſeth him to uſe; and as to that, that ſome acts of parliament have been cited, wherein the parliaments of *England* have taken upon them to order matters of *Gaſcoigne*, if thoſe ſtatutes be well looked into, nothing doth more plainly convince the contrary, for they intermeddle with nothing but that that concerneth either the *Engliſh* ſubjects perſonally, or the territories of *England* locally, and never the ſubjects of *Gaſcoigne*; for look upon the ſtatute of 27 *E.* III. *cap.* 5. there it is ſaid, that there ſhall be no fore-ſtalling of wines, but by whom? Only by *Engliſh* merchants; not a word of the ſubjects of *Gaſcoigne*, and yet no doubt they might be offenders in the ſame kind.

So

So in the ſixth chapter it is ſaid, that all merchants *Gaſcoignes* may ſafely bring wines into what part it ſhall pleaſe them; here now are the perſons of *Gaſcoignes*; but then the place whither? Into the realm of *England*. And in the ſeventh chap. that erects the ports of *Bourdeaux* and *Bayonne* for the ſtaple towns of wine; the ſtatute ordains that if any; but who? *Engliſh* merchant or his ſervants ſhall buy or bargain other where, his body ſhall be arreſted by the ſteward of *Gaſcoigne*, or the conſtable of *Bourdeaux:* true, for the officers of *England* could not catch him in *Gaſcoigne*; but what ſhall become of him, ſhall he be proceeded with within *Gaſcoigne?* No, but he ſhall be ſent over into *England* into the tower of *London*.

And this doth notably diſcloſe the reaſon of that cuſtom which ſome have ſought to wreſt the other way: That cuſtom, I ſay, whereof a form doth yet remain, that in every parliament the King doth appoint certain committees in the upper-houſe to receive the petitions of *Normandy*, *Guienne*, and the reſt; which, as by the former ſtatute doth appear, could not be for the ordering of the governments there, but for the liberties and good uſage of the ſubjects of thoſe parts when they came hither, or *via verſa*, for the reſtraining of the abuſes and miſdemeanors of our ſubjects when they went thither.

Wherefore I am now at an end. For us to ſpeak of the miſchiefs, I hold it not fit for this place, leſt we ſhould ſeem to bend the laws to policy, and not take them in their true and natural ſenſe. It is enough that every man knows, that it is true of theſe two kingdoms, which a good father ſaid of the churches of Chriſt: *ſi inſeparabiles inſuperabiles*. Some things I may have forgot, and ſome things perhaps I may forget willingly; for I will not preſs any opinion or declaration of late time which may prejudice the liberty of this debate; but *ex dictis, & ex non dictis*, upon the whole matter I pray judgment for the plaintiff.

A BRIEF

DISCOURSE

Of the Happy

UNION

OF THE

KINGDOMS

OF

ENGLAND and *SCOTLAND.*

Dedicated in private to His MAJESTY.

I Do not find it ſtrange, excellent King, that when *Heraclitus* (he that was ſurnamed the obſcure) had ſet forth a certain book which is not now extant, many men took it for a diſcourſe of nature, and many others took it for a treatiſe of policy. For there is a great affinity and conſent between the rules of nature, and the true rules of policy: the one being nothing elſe but an order in the government of the world; and the other an order in the government of an eſtate. And therefore the education and erudition of the Kings of *Perſia*, was in a ſcience which was termed by a name then of great reverence; but now degenerate and taken in the ill part. For the *Perſian* magick, which was the ſecret literature of their Kings, was an application of the contemplations and obſervations of nature unto a ſenſe politick: taking the fundamental laws of nature, and the branches and paſſages of them, as an original or firſt model, whence to take and deſcribe a copy and imitation for government.

AFTER this manner the aforeſaid inſtructors ſet before their Kings the examples of the celeſtial bodies, the Sun, the Moon, and the reſt, which have great glory and veneration, but no reſt or intermiſſion; being in a perpetual office of motion, for the cheriſhing (in turn and in courſe) of inferior bodies: expreſſing likewiſe the true manner of the motions of government, which though they ought to be ſwift and rapid in reſpect of diſpatch and occaſions, yet are they to be conſtant and regular, without wavering or confuſion.

So did they repreſent unto them how the heavens do not enrich themſelves by the earth and the ſeas, nor keep no dead ſtock, nor untouched treaſures of that they draw to them from below: but whatſoever moiſture they do levy and take from both elements in vapours, they do ſpend and turn back again in ſhowers, only holding and ſtoring them up for a time, to the end to iſſue and diſtribute them in ſeaſon. BUT

But chiefly, they did expreſs and expound unto them that fundamental law of nature, whereby all things do ſubſiſt and are preſerved; which is that every thing in nature, although it hath its private and particular affection and appetite, and doth follow and purſue the ſame in ſmall moments; and when it is free and delivered from more general and common reſpects, yet nevertheleſs, when there is queſtion or caſe for ſuſtaining of the more general, they forſake their own particularities, and attend and conſpire to uphold the publick.

So we ſee the iron in ſmall quantity will aſcend and approach to the load-ſtone, upon a particular ſympathy: but if it be any quantity of moment, it leaveth its appetite of amity to the *loadſtone*, and like a good patriot to the earth, which is the place and region of maſſy bodies.

So again the water, and other like bodies, do fall towards the centre of the earth, which is (as was ſaid) their region or country: and yet we ſee nothing more uſual in all water-works and engines, than that the water (rather than to ſuffer any diſtraction or diſunion in nature) will aſcend, forſaking the love to its own region or country, and applying itſelf to the body next adjoining.

But it were too long a digreſſion to proceed to more examples of this kind. Your Majeſty yourſelf did fall upon a paſſage of this nature in your gracious ſpeech of thanks unto your counſel, when acknowledging princely their vigilancies and well deſervings, it pleaſed you to note, that it was a ſucceſs and event above the courſe of nature, to have ſo great change with ſo great a quiet: Foraſmuch as ſudden mutations as well in ſtate as in nature, are rarely without violence and perturbation: So as ſtill I conclude there is (as was ſaid) a congruity between the principles of nature and policy. And leſt that inſtance may ſeem to oppone to this aſſertion, I may even in that particular, with your Majeſty's favour, offer unto you a type or pattern in nature, much reſembling this event in your ſtate; namely, earthquakes, which many of them bring ever much terror and wonder, but no actual hurt; the earth trembling for a moment, and ſuddenly ſtabliſhing in perfect quiet as it was before.

This knowledge then of making the government of the world a mirror for the government of a ſtate, being a wiſdom almoſt loſt, (whereof the reaſon I take to be becauſe of the difficulty for one man to embrace both philoſophies) I have thought good to make ſome proof (as far as my weakneſs and the ſtraits of time will ſuffer) to revive in the handling of one particular wherewith now I moſt humbly preſent your Majeſty: for ſurely, as hath been ſaid, it is a form of diſcourſe anciently uſed towards Kings; and to what King ſhould it be more proper, than to a King that is ſtudious to conjoin contemplative virtue, and active virtue together?

Your Majeſty is the firſt King that had the honour to be *lapis angularis*, to unite theſe two mighty and warlike nations of *England* and *Scotland* under one ſovereignty and monarchy. It doth not appear by the records and memoirs of any true hiſtory; or ſcarcely by the fiction and pleaſure of any fabulous narration or tradition, that ever, of any antiquity, this iſland of *Great Britain* was united under one King before this day. And yet there be no mountains nor races of hills, there be no ſeas or great rivers, there is no diverſity of tongue or language that hath invited or provoked this ancient ſeparation or divorce. The lot of *Spain* was to have the ſeveral kingdoms of that continent (*Portugal* only excepted) to be united in an age not long paſt; and now in our age that of *Portugal* alſo, which was the laſt that held out

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to be incorporate with the reſt. The lot of *France* hath been much about the ſame time likewiſe, to have re-annexed unto that crown the ſeveral duchies and portions which were in former times diſmembred. The lot of this iſland is the laſt reſerved for your Majeſty's happy times, by the ſpecial providence and favour of God, who hath brought your Majeſty to this happy conjunction with great conſent of hearts, and in the ſtrength of your years, and in the maturity of your experience. It reſteth but that (as I promiſed) I ſet before your Majeſty's princely conſideration, the grounds of nature touching the union and commixture of bodies, and the correſpondence which they have with the grounds of policy in the conjunction of ſtates and kingdoms.

First, therefore, that poſition, *vis unita fortior*; being one of the common notions of the mind, needeth not much to be induced or illuſtrated.

We ſee the ſun when he entereth, and while he continueth under the ſign of *Leo* cauſeth more vehement heats than when he is in *Cancer*, what time his beams are nevertheleſs more perpendicular. The reaſon whereof, in great part, hath been truly aſcribed to the conjunction and cor-radiation in that place of heaven, of the ſun with the four ſtars of the firſt magnitude, *Sirius*, *Canicula*, *Cor Leonis*, and *Cauda Leonis*.

So the moon likewiſe by ancient tradition, while ſhe is in the ſame ſign of *Leo*, is ſaid to be at the heart, which is not for any affinity which that place of heaven can have with that part of man's body, but only becauſe the moon is then by reaſon of the conjunction and nearneſs with the ſtars aforenamed, in greateſt ſtrength of influence, and ſo worketh upon that part in inferior bodies, which is moſt vital and principal.

So we ſee waters and liquors, in ſmall quantity, do eaſily putrify and corrupt; but in large quantity ſubſiſt long, by reaſon of the ſtrength they receive by union.

So in earthquakes, the more general do little hurt, by reaſon of the united weight which they offer to ſubvert; but narrow and particular earthquakes have many times overturned whole towns and cities.

So then this point touching the force of union is evident: and therefore it is more fit to ſpeak of the manner of union; wherein again it will not be pertinent to handle one kind of union, which is union by victory, when one body doth merely ſubdue another, and converteth the ſame into its own nature, extinguiſhing and expulſing what part ſoever of it, it cannot overcome. As when the fire converteth the wood into fire, purging away the ſmoke and the aſhes as unapt matter to inflame: Or when the body of a living creature doth convert and aſſimilate food and nouriſhment, purging and expelling whatſoever it cannot convert. For theſe repreſentations do anſwer in matter of policy to union of countries by conqueſt, where the conquering ſtate doth extinguiſh, extirpate, and expulſe any part of the ſtate conquered, which it findeth ſo contrary as it cannot alter and convert it. And therefore leaving violent unions, we will conſider only of natural unions.

The difference is excellent which the beſt obſervers in nature do take between *compoſitio* and *miſtio*, putting together and mingling: the one being but a conjunction of bodies in place, the other in quality and conſent: the one the mother of ſedition and alteration, the other of peace and continuance: the one rather a confuſion than an union, the other properly an union. Therefore we ſee thoſe bodies, which they call *imperfectè miſta*, laſt not, but are ſpeedily diſſolved. For take for example ſnow or froth, which are compoſitions of air and water, and in them you may behold how eaſily

eaſily they ſever and diſſolve the water, cloſing together and excluding the air.

So thoſe three bodies which the alchymiſts do ſo much celebrate as the three principles of things; that is to ſay, earth, water, and oil; (which it pleaſeth them to term ſalt, mercury, and ſulphur,) we ſee, if they be united only by compoſition or putting together, how weakly and rudely they do incorporate: for water and earth make but an imperfect ſlime; and if they be forced together by agitation, yet upon a little ſettling, the earth reſideth in the bottom. So water and oil, though by agitation it be brought into an ointment, yet after a little ſettling, the oil will float on the top. So as ſuch imperfect mixtures continue no longer than they are forced; and ſtill in the end the worthieſt getteth above.

But otherwiſe it is of perfect mixtures. For we ſee theſe three bodies of earth, water, and oil, when they are joined in a vegetable or mineral, they are ſo united, as without great ſubtlety of art and force of extraction, they cannot be ſeparated and reduced into the ſame ſimple bodies again. So as the difference between *compoſitio* and *miſtio* clearly ſet down is this; that *compoſitio* is the joining or putting together of bodies without a new form; and *miſtio* is the joining or putting together of bodies under a new form: For the new form is *commune vinculum*, and without that the old forms will be at ſtrife and diſcord.

Now to reflect this light of nature upon matter of eſtate; there hath been put in practice in government theſe two ſeveral kinds of policy in uniting and conjoining of ſtates and kingdoms; the one to retain the ancient form ſtill ſevered, and only conjoined in ſovereignty; the other to ſuperinduce a new form agreeable and convenient to the entire eſtate. The former of theſe hath been more uſual, and is more eaſy; but the latter is more happy. For if a man do attentively revolve hiſtories of all nations, and judge truly thereupon, he will make this concluſion, that there was never any ſtates that were good commixtures but the *Roman*; which becauſe it was the beſt ſtate of the world, and is the beſt example of this point, we will chiefly inſiſt thereupon.

In the antiquities of *Rome Virgil* bringeth in *Jupiter* by way of oracle or prediction, ſpeaking of the mixture of the *Trojans* and the *Italians*.

Sermonem Auſonii patrium moreſque tenebunt:
Utque eſt nomen erit; commixti corpore tantum,
Subſident Teucri; morem, rituſque ſacrorum
Adjiciam; faciamque omnes uno ore Latinos.
Hinc genus Auſonio miſtum, quod ſanguine ſurget,
Supra homines, ſupra ire Deos pietate videbis. Æn. xii. 834.

Wherein *Jupiter* maketh a kind of partition or diſtribution: that *Italy* ſhould give the language and the laws; *Troy* ſhould give a mixture of men, and ſome religious rites; and both people ſhould meet in one name of *Latins*.

Soon after the foundation of the city of *Rome*, the people of the *Romans* and the *Sabines* mingled upon equal terms: wherein the interchange went ſo even that (as *Livy* noteth) the one nation gave the name to the place, the other to the people. For *Rome* continued the name, but the people were called *Quirites*, which was the *Sabine* word derived of *Cures* the country of *Tatius*.

But that which is chiefly to be noted in the whole continuance of the *Roman* government; they were ſo liberal of their naturalizations, as in effect

they made perpetual mixtures. For the manner was to grant the ſame, not only to particular perſons, but to families and lineages; and not only ſo, but to whole cities and countries. So as in the end it came to that, that *Rome* was *communis patria*, as ſome of the civilians call it.

So we read of St. *Paul*, after he had been beaten with rods, and thereupon charged the officer with the violation of the privilege of a citizen of *Rome*; the captain ſaid to him, Art thou then a *Roman?* That privilege hath coſt me dear. To whom St. *Paul* replied, but I was ſo born; and yet, in another place, St. *Paul* profeſſeth himſelf, that he was a *Jew* by tribe: ſo as it is manifeſt that ſome of his anceſtors were naturalized; and ſo it was conveyed to him and their other deſcendents.

So we read, that it was one of the firſt deſpites that was done to *Julius Caeſar*, that whereas he had obtained naturalization for a city in *Gaul*, one of the city was beaten with rods of the conſul *Marcellus*.

So we read in *Tacitus*, that in the Emperor *Claudius*'s time, the nation of *Gaul* (that part which is called *Comata*, the wilder part) were ſuitors to be made capable of the honour of being ſenators and officers of *Rome*. His words are theſe; *Cum de ſupplendo ſenatu agitaretur, primoreſque Galliae, quae Comata appellatur, foedera & civitatem Romanam pridem aſſecuti, jus adipiſcendorum in urbe honorum, expeterent; multus, ea ſuper re, variuſque rumor, & ſtudiis diverſis, apud principem certabatur.* And in the end, after long debate, it was ruled they ſhould be admitted.

So likewiſe, the authority of *Nicholas Machiavel* ſeemeth not to be contemned; who enquiring the cauſes of the growth of the *Roman* Empire, doth give judgment; there was not one greater than this, that the ſtate did ſo eaſily compound and incorporate with ſtrangers.

It is true, that moſt eſtates and kingdoms have taken the other courſe; of which this effect hath followed, that the addition of further empire and territory hath been rather matter of burthen, than matter of ſtrength unto them: yea, and farther it hath kept alive the ſeeds and roots of revolts and rebellions for many ages; as we may ſee in a freſh and notable example of the kingdom of *Aragon:* which, though it were united to *Caſtile* by marriage, not by conqueſt; and ſo deſcended in hereditary union by the ſpace of more than an hundred years; yet becauſe it was continued in a divided government, and not well incorporated and cemented with the other crowns, entered into a rebellion upon point of their *fueros*, or liberties, now of very late years.

Now to ſpeak briefly of the ſeveral parts of that form, whereby ſtates and kingdoms are perfectly united, they are (beſides the ſovereignty it ſelf) four in number; union in name, union in language, union in laws, union in employments.

For name, though it ſeem but a ſuperficial and outward matter, yet it carrieth much impreſſion and enchantment: The general and common name of *Graecia* made the *Greeks* always apt to unite (though otherwiſe full of diviſions amongſt themſelves) againſt other nations whom they called barbarous. The *Helvetian* name is no ſmall band to knit together their leagues and confederacies the faſter. The common name of *Spain* (no doubt) hath been a ſpecial means of the better union and conglutination of the ſeveral kingdoms of *Caſtile*, *Arragon*, *Granada*, *Navarre*, *Valentia*, *Catalonia*, and the reſt, comprehending alſo now lately *Portugal*.

For language, it is not needful to inſiſt upon it; becauſe both your Majeſty's kingdoms are of one language, though of ſeveral dialects; and the

difference is ſo ſmall between them as promiſeth rather an inriching of one language than a continuance of two.

For laws which are the principal ſinews of government, they may be of three natures; *jura*, which I will term freedoms or abilities, *leges*, and *mores*.

For abilities and freedoms they were amongſt the *Romans* of four kinds, or rather degrees. *Jus connubii*, *jus civitatis*, *jus ſuffragii*, and *jus petitionis* or *honorum*. *Jus connubii* is a thing in theſe times out of uſe: for marriage is open between all diverſities of nations. *Jus civitatis* anſwereth to that we call denization or naturalization. *Jus ſuffragii* anſwereth to the voice in parliament. *Jus petitionis* anſwereth to place in counſel or office. And the *Romans* did many times ſever theſe freedoms; granting *Jus connubii*, *ſine civitate*, and *civitatem*, *ſine ſuffragio*, and *ſuffragium*, *ſine jure petitionis*, which was commonly with them the laſt.

For thoſe we called *leges*. It is as matter of curioſity, and inconveniency to ſeek either to extirpate all particular cuſtoms, or to draw all ſubjects to one place or reſort of judicature and ſeſſion. It ſufficeth there be a uniformity in the principal and fundamental laws, both eccleſiaſtical and civil: for in this point the rule holdeth which was pronounced by an ancient father, touching the diverſity of rites in the church; for finding the veſture of the Queen in the pſalm (which did prefigure the church) was of divers colours; and finding again that Chriſt's coat was without a ſeam, he concludeth well, *in veſte varietas ſit, ſciſſura non ſit.*

For manners; a conſent in them is to be ſought induſtriouſly, but not to be enforced: for nothing amongſt people breedeth ſo much pertinacy in holding their cuſtoms as ſudden and violent offers to remove them.

And as for employments it is no more, but in indifferent hand, and execution of that verſe:

Tros, Tyriuſque mihi nullo diſcrimine agetur.

There remaineth only to remember out of the grounds of nature the two conditions of perfect mixture; whereof the former is time: For the natural philoſophers ſay well, that *compoſitio* is *opus hominis*, and *miſtio opus naturae*. For it is the duty of man to make a fit application of bodies together: but the perfect fermentation and incorporation of them muſt be left to time and nature; and unnatural haſting thereof doth diſturb the work and not diſpatch it.

So we ſee, after the graft is put into the ſtock and bound, it muſt be left to time and nature to make that *continuum*, which at the firſt was but *contiguum*. And it is not any continual preſſing or thruſting together that will prevent nature's ſeaſon, but rather hinder it. And ſo in liquors thoſe commixtures which are at the firſt troubled, grow after clear and ſettled by the benefit of reſt and time.

The ſecond condition is, that the greater draw the leſs. So we ſee when two lights do meet, the greater doth darken and dim the leſs. And when a ſmaller river runneth into a greater, it loſeth both its name and ſtream. And hereof to conclude, we ſee an excellent example in the Kingdoms of *Judah* and *Iſrael*. The Kingdom of *Judah* contained two tribes; the Kingdom of *Iſrael* contained ten. King *David* reigned over *Judah* for certain years; and after the death of *Iſhboſheth*, the ſon of *Saul* obtained likewiſe the Kingdom of *Iſrael*. This union continued in him, and likewiſe in his ſon *Solomon*, by the ſpace of 70 years, at leaſt between them both: But yet, becauſe

becauſe the ſeat of the kingdom was kept ſtill in *Judah*, and ſo the leſs ſought to draw the greater; upon the firſt occaſion offered, the kingdom brake again, and ſo continued ever after.

THUS having in all humbleneſs made oblation to your Majeſty of theſe ſimple fruits of my devotion and ſtudies: I do wiſh, and do wiſh it not in the nature of an impoſſibility, (to my apprehenſion) that this happy union of your Majeſty's two kingdoms of *England* and *Scotland* may be in as good an hour, and under the like divine providence, as that was between the *Romans* and the *Sabines*.

CERTAIN

ARTICLES

OR

CONSIDERATIONS

Touching the

UNION

OF THE

KINGDOMS

OF

ENGLAND and *SCOTLAND:*

Collected and diſperſed for His MAJESTY's better ſervice.

YOUR Majeſty being, I doubt not, directed and conducted by a better oracle than that which was given for light to *Æneas* in his peregrination, (*antiquam exquirite matrem*) hath a royal, and indeed an heroical deſire to reduce theſe two kingdoms of *England* and *Scotland* into the unity of their ancient mother Kingdom of *Britain*. Wherein as I would gladly applaud unto your Majeſty, or ſing aloud that hymn or anthem, *Sic itur ad aſtra*; ſo in a more ſoft and ſubmiſſive voice, I muſt neceſſarily remember unto your Majeſty that warning or caveat *ardua quae pulchra*: It is an action that requireth, yea, and needeth much, not only of your Majeſty's

jeſty's wiſdom, but of your felicity. In this argument I preſumed at your Majeſty's firſt entrance to write a few lines, indeed ſcholaſtically and ſpeculatively, and not actively or politickly, as I held it fit for me at that time; when neither your Majeſty was in that your deſire declared, nor my ſelf in that ſervice uſed or truſted. But now that both your Majeſty hath opened your deſire and purpoſe with much admiration even of thoſe who give it not ſo full an approbation, and that my ſelf was by the commons graced with the firſt vote of all the commons ſelected for that cauſe; not in any eſtimation of my ability, (for therein ſo wiſe an aſſembly could not be ſo much deceived) but in an acknowledgment of my extreme labours and integrity. In that buſineſs I thought my ſelf every way bound both in duty to your Majeſty, and in truſt to that houſe of parliament, and in conſent to the matter itſelf, and in conformity to mine own travels and beginning, not to neglect any pains that may tend to the furtherance of ſo excellent a work; wherein I will endeavour that that which I ſhall ſet down be *nihil minus quam verba*: For length and ornament of ſpeech are to be uſed for perſuaſion of multitudes, and not for information of Kings; eſpecially ſuch a King as is the only inſtance that ever I knew to make a man of *Plato*'s opinion, that all knowledge is but remembrance, and that the mind of man knoweth all things, and demandeth only to have her own notions excited and awaked: Which your Majeſty's rare and indeed ſingular gift and faculty of ſwift apprehenſion and infinite expanſion or multiplication of another man's knowledge by your own, as I have often obſerved, ſo I did extremely admire in *Goodwin*'s cauſe, being a matter full of ſecrets and myſteries of our laws, merely new unto you, and quite out of the path of your education, reading and conference: wherein nevertheleſs upon a ſpark of light given, your Majeſty took in ſo dextrouſly and profoundly, as if you had been indeed *anima legis*, not only in execution but in underſtanding: The remembrance whereof, as it will never be out of my mind, ſo it will always be a warning to me to ſeek rather to excite your judgment briefly than to inform it tediouſly; and if in a matter of that nature, how much more in this, wherein your princely cogitations have wrought themſelves, and been converſant, and wherein the principal light proceeded from your ſelf.

And therefore my purpoſe is only to break this matter of the union into certain ſhort articles and queſtions, and to make a certain kind of anatomy or analyſis of the parts and members thereof: not that I am of opinion that all the queſtions which I now ſhall open were fit to be in the conſultation of the commiſſioners propounded. For I hold nothing ſo great an enemy to good reſolution, as the making of too many queſtions; eſpecially in aſſemblies, which conſiſt of many. For Princes for avoiding of diſtraction muſt take many things by way of admittance; and if queſtions muſt be made of them, rather to ſuffer them to ariſe from others, than to grace them and authoriſe them as propounded for themſelves. But unto your Majeſty's private conſideration, to whom it may better ſort with me rather to ſpeak as a remembrancer than as a counſellor, I have thought good to lay before you all the branches, lineaments, and degrees of this union, that upon the view and conſideration of them and their circumſtances, your Majeſty may the more clearly diſcern, and more readily call to mind which of them is to be embraced, and which to be rejected: and of theſe, which are to be accepted, which of them to be preſently proceeded in, and which to be put over to farther time. And again, which of them ſhall require authority of parliament, and which are fitter to be effected by your Majeſty's royal power and

prerogative, or by other policies or means; and laſtly, which of them is liker to paſs with difficulty and contradiction, and which with more facility and ſmoothneſs.

FIRST, therefore to begin with that queſtion, that I ſuppoſe will be out of queſtion.

Statutes concerning *Scotland*, and the *Scotiſh* nation.

WHETHER it be not meet, that the ſtatutes, which were made touching *Scotland* or the *Scotiſh* nation, while the kingdoms ſtood ſevered, be repealed?

IT is true, that there is a diverſity in theſe; for ſome of theſe laws conſider *Scotland* as an enemy's country; other laws conſider it as a foreign country only: As for example; the law of *Rich.* II. *Anno* 7. which prohibiteth all armour or victual to be carried to *Scotland*; and the law of 7 of K. *H.* VII. that enacteth all the *Scotiſh* men to depart the realm within a time prefix'd. Both theſe laws, and ſome others reſpect *Scotland* as a country of hoſtility: but the law of 22 of *Edw.* IV. that endueth *Berwick* with the liberty of a ſtaple, where all *Scotiſh* merchandizes ſhould reſort that ſhould be uttered for *England*; and likewiſe all *Engliſh* merchandizes that ſhould be uttered for *Scotland*. This law beholdeth *Scotland* only as a foreign nation; and not ſo much neither; for there have been erected ſtaples in towns of *England* for ſome commodities, with an excluſion and reſtriction of other parts of *England*.

Laws, cuſtoms, commiſſions, officers of the borders or marches.

BUT this is a matter of the leaſt difficulty; your Majeſty ſhall have a calendar made of the laws, and a brief of the effect; and ſo you may judge of them: And the like or reciproque is to be done by *Scotland* for ſuch laws as they have concerning *England* and the *Engliſh* nation.

The ſecond queſtion is, what laws, cuſtoms, commiſſions, officers, gariſons, and the like, are to be put down, diſcontinued or taken away upon the borders of both realms?

To this point, becauſe I am not acquainted with the orders of the marches, I can ſay the leſs.

HEREIN falleth that queſtion, whether that the tenants, who hold their tenant rights in a greater freedom and exemption, in conſideration of their ſervice upon the borders, and that the countries themſelves, which are in the ſame reſpect diſcharged of ſubſidies and taxes, ſhould not now be brought to be in one degree with other tenants and countries; *nam ceſſante cauſa, tollitur effectus:* wherein, in my opinion, ſome time would be given; *quia adhuc eorum meſſis in herba eſt:* but ſome preſent ordinance would be made to take effect at a future time, conſidering it is one of the greateſt points and marks of the diviſion of the Kingdoms. And becauſe reaſon doth dictate, that where the principal ſolution of continuity was, there the healing and conſolidating plaiſter ſhould be chiefly applied; there would be ſome farther device for the utter and perpetual confounding of thoſe imaginary bounds, (as your Majeſty termeth them:) and therefore it would be conſidered, whether it were not convenient to plant and erect at *Carliſle* or *Berwick* ſome council or court of juſtice, the juriſdiction whereof might extend part into *England* and part into *Scotland*, with a commiſſion not to proceed preciſely or merely, according to the laws and cuſtoms either of *England* or *Scotland*, but mixtly, according to inſtruction by your Majeſty to be ſet down, after the imitation and precedent of the council of the marches here in *England*, erected upon the union of *Wales?*

THE third queſtion is that which many will make a great queſtion of, though perhaps your Majeſty will make no queſtion of it: and that is, whether

ther your Majeſty ſhould not make a ſtop or ſtand here, and not to proceed to any farther union, contenting your ſelf with the two former articles or points. Farther union beſides the removing of inconvenient and diſſenting laws and uſages.

For it will be ſaid, that we are now well, (thanks be to God) and your Majeſty, and the ſtate of neither kingdom is to be repented of; and that it is true which *Hippocrates* ſaith, that *ſana corpora difficile medicationes ferunt*, it is better to make alterations in ſick bodies than in ſound. The conſideration of which point will reſt upon theſe two branches: What inconveniencies will enſue with time, if the realms ſtand as they are divided, which are yet not found nor ſprung up. For it may be the ſweetneſs of your Majeſty's firſt entrance, and the great benefit that both nations have felt thereby, hath covered many inconveniencies: which nevertheleſs be your Majeſty's government never ſo gracious and politick, continuance of time and the accidents of time may breed and diſcover, if the kingdoms ſtand divided.

The ſecond branch is; allow no manifeſt or important peril or inconvenience ſhould enſue of the continuing of the kingdoms divided, yet on the other ſide, whether that upon the farther uniting of them, there be not like to follow that addition and encreaſe of wealth and reputation, as is worthy your Majeſty's virtues and fortune, to be the author and founder of, for the advancement and exaltation of your Majeſty's royal poſterity in time to come?

But admitting that your Majeſty ſhould proceed to this more perfect and entire union, wherein your Majeſty may ſay *majus opus moveo*. To enter into the parts and degrees thereof, I think fit firſt to ſet down as in a brief table in what points the nations ſtand now at this preſent time already united, and in what points yet ſtill ſevered and divided, that your Majeſty may the better ſee what is done, and what is to be done; and how that which is to be done is to be inferred upon that which is done. Points wherein the nations ſtand already united.

The points wherein the nations ſtand already united are:

In ſovereignty.

In the relative thereof, which is ſubjection.

In religion.

In continent.

In language.

And now laſtly, by the peace by your Majeſty concluded with *Spain* in leagues and confederacies; for now both nations have the ſame friends and the ſame enemies.

Yet notwithſtanding there is none of the ſix points, wherein the union is perfect and conſummate; but every of them hath ſome ſcruple or rather grain of ſeparation enwrapped and included in them.

For the ſovereignty, the union is abſolute in your Majeſty and your generation; but if it ſhould ſo be, (which God of his infinite mercy defend) that your iſſue ſhould fail, then the deſcent of both realms doth reſort to the ſeveral lines of the ſeveral bloods royal. Sovereignty, line royal.

For ſubjection I take the law of *England* to be clear, (what the law of *Scotland* is I know not) that all *Scotſmen* from the very inſtant of your Majeſty's reign begun, are become denizens, and the *Poſt-nati* are naturalized ſubjects of *England* for the time forward: for by our laws none can be an alien but he that is of another allegiance, than our ſovereign lord the King: for there be but two ſorts of aliens, whereof we find mention in our law an alien ami, and an alien enemy; whereof the former is a ſubject of a ſtate in amity with the King, and the latter a ſubject of a ſtate in hoſtility: but whether Subjection, obedience. Alien, naturalization.

ther he be one or other, it is an eſſential difference unto the definition of an alien, if he be not of the King's allegiance; as we ſee it evidently in the precedent of *Ireland*, who ſince they were ſubjects to the crown of *England*, have ever been inheritable and capable as natural ſubjects; and yet not by any ſtatute or act of parliament, but merely by the common-law, and the reaſon thereof. So as there is no doubt, that every ſubject of *Scotland* was, and is in like plight and degree, ſince your Majeſty's coming in, as if your Majeſty had granted particularly your letters of denization or naturalization to every of them, and the *Poſt-nati* wholly natural. But then on the other ſide for the time backwards, and for thoſe that were *Ante-nati*, the blood is not by law naturalized, ſo as they cannot take it by deſcent from their anceſtors without act of parliament: And therefore in this point there is a defect in the union of ſubjection.

Religion, church government.

FOR matter of religion, the union is perfect in points of doctrine; but in matter of diſcipline and government it is imperfect.

Continent, borders.

FOR the continent, it is true there are no natural boundaries of mountains or ſeas, or navigable rivers; but yet there are badges and memorials of borders; of which point I have ſpoken before.

Language, dialect.

FOR the language, it is true the nations are *unius labii*, and have not the firſt curſe of diſunion, which was confuſion of tongues, whereby one underſtood not another. But yet the dialect is differing, and it remaineth a kind of mark of diſtinction. But for that *tempori permittendum*, it is to be left to time. For conſidering that both languages do concur in the principal office and duty of a language, which is to make a man's ſelf underſtood; for the reſt, it is rather to be accounted (as was ſaid) a diverſity of dialect than of language: and, as I ſaid in my firſt writing, it is like to bring forth the enriching of one language, by compounding and taking in the proper and ſignificant words of either tongue, rather than a continuance of two languages.

Leagues, confederacies, treaties.

FOR leagues and confederacies, it is true, that neither nation is now in hoſtility with any ſtate, wherewith the other nation is in amity: but yet ſo, as the leagues and treaties have been concluded with either nation reſpectively, and not with both jointly, which may contain ſome diverſity of articles of ſtraitneſs of amity with one more than with the other.

BUT many of theſe matters may perhaps be of that kind as may fall within that rule, *in veſte varietas ſit, ſciſſura non ſit.*

Now to deſcend to the particular points wherein the realms ſtand ſevered and divided, over and beſides the former ſix points of ſeparation, which I have noted and placed as defects or abatements of the ſix points of the union, and therefore ſhall not need to be repeated: The points I ſay yet remaining I will divide into external and internal.

External points of the ſeparation and union.

THE external points therefore of the ſeparation are four.

1. THE ſeveral crowns, I mean the ceremonial and material crowns.
2. THE ſecond is the ſeveral names, ſtyles, or appellations.
3. The third is the ſeveral prints of the ſeals.
4. THE fourth is the ſeveral ſtamps or marks of the coins or monies.

IT is true, that the external are in ſome reſpects and parts much mingled and interlaced with conſiderations internal; and that they may be as effectual to the true union which muſt be the work of time as the internal, becauſe they are operative upon the conceits and opinions of the people; the uniting of whoſe hearts and affections is the life and true end of this work.

FOR the ceremonial crowns, the queſtion will be whether there ſhall be framed one new imperial crown of *Britain* to be uſed for the times to come? Alſo admitting that to be thought convenient, whether in the frame thereof there ſhall not be ſome reference to the crowns of *Ireland* and *France?* The ceremonial or material crowns.

ALSO whether your Majeſty ſhould repeat or iterate your own coronation and your Queen's, or only ordain that ſuch new crown ſhall be uſed by your poſterity hereafter?

THE difficulties will be in the conceit of ſome inequality, whereby the realm of *Scotland* may be thought to be made an acceſſion unto the realm of *England*. But that reſteth in ſome circumſtances; for the compounding of the two crowns is equal; the calling of the new crown the crown of *Britain* is equal. Only the place of coronation, if it ſhall be at *Weſtminſter*, which is the ancient, auguſt and ſacred place for the Kings of *England*, may ſeem to make an inequality. And again, if the crown of *Scotland* be diſcontinued, then that ceremony which I hear is uſed in the parliament of *Scotland* in the abſence of the Kings, to have the crowns carried in ſolemnity, muſt likewiſe ceaſe.

FOR the name, the main queſtion is whether the contracted name of *Britain* ſhall be by your Majeſty uſed, or the divided names of *England* and *Scotland?* The ſtyles and names.

ADMITTING there ſhall be an alteration, then the caſe will require theſe inferior queſtions.

FIRST, whether the name of *Britain* ſhall only be uſed in your Majeſty's ſtyle, where the entire ſtyle is recited; and in all other forms the divided names to remain, both of the realms and of the people? or otherwiſe, that the very divided names of realms and people ſhall likewiſe be changed or turned into ſpecial or ſubdivided names of the general name; that is to ſay, for example, whether your Majeſty in your ſtyle ſhall denominate your ſelf King of *Britain*, *France*, and *Ireland*, *&c.* And yet nevertheleſs in any commiſſion, writ, or otherwiſe, where your Majeſty mentions *England* or *Scotland*, you ſhall retain the ancient names, as *ſecundum conſuetudinem regni noſtri Angliae*; or whether thoſe divided names ſhall be for ever loſt and taken away, and turned into the ſubdiviſions of *South-Britain* and *North-Britain*, and the people to be *South-Britains* and *North-Britains?* And ſo in the example aforeſaid, the tenour of the like clauſe to run *ſecundum conſuetudinem Britanniae auſtralis.*

ALSO if the former of theſe ſhall be thought convenient, whether it were not better for your Majeſty to take that alteration of ſtyle upon you by proclamation, as *Edward* the third did the ſtyle of *France*, than to have it enacted by parliament?

ALSO in the alteration of the ſtyle, whether it were not better to tranſpoſe the kingdom of *Ireland*, and put it immediately after *Britain*, and ſo place the iſlands together; and the kingdom of *France* being upon the continent laſt, in regard that theſe iſlands of the weſtern ocean ſeem by nature and providence an entire empire in themſelves; and alſo, that there was never King of *England* ſo entirely poſſeſt of *Ireland* as your Majeſty is: ſo as your ſtyle to run King of *Britain*, *Ireland*, and the iſlands adjacent, and of *France*, *&c.*

THE difficulties in this have been already throughly beaten over; but they gather but to two heads.

THE one, point of honour and love to the former names.

THE other, doubt, leſt the alteration of the name may induce and involve an alteration of the laws and policies of the kingdom; both which, if your Majeſty ſhall aſſume the ſtyle by proclamation, and not by parliament, are in themſelves ſatisfied: for then the uſual names muſt needs remain in writs and records, the forms whereof cannot be altered but by act of parliament, and ſo the point of honour ſatisfied. And again, your proclamation altereth no law, and ſo the ſcruple of a tacit or implied alteration of laws likewiſe ſatisfied. But then it may be conſidered, whether it were not a form of the greateſt honour, if the parliament, though they did not enact it, yet ſhould become ſuitors and petitioners to your Majeſty to aſſume it.

The ſeals.

FOR the ſeals, that there ſhould be but one great ſeal of *Britain*, and one chancellor, and that there ſhould only be a ſeal in *Scotland* for proceſſes and ordinary juſtice; and that all patents of grants of lands or otherwiſe, as well in *Scotland* as in *England*, ſhould paſs under the great ſeal here, kept about your perſon; it is an alteration internal, whereof I do not now ſpeak.

BUT the queſtion in this place is, whether the great ſeals of *England* and *Scotland* ſhould not be changed into one and the ſame form of image and ſuperſcription of *Britain*, which nevertheleſs is requiſite ſhould be, with ſome one plain manifeſt alteration, leſt there be a buz, and ſuſpect, that grants of things in *England*, may be paſſed by the ſeal of *Scotland*, or *è converſo*?

ALSO, whether this alteration of form may not be done without act of parliament, as the great ſeals have uſed to be heretofore changed as to their impreſſions?

FOR the monies, as to the real and internal conſideration thereof, the queſtion will be, whether your Majeſty ſhould not continue two mints, which, the diſtance of territory conſidered, I ſuppoſe will be of neceſſity?

The ſtandards and ſtamps, monies.

SECONDLY, how the ſtandard (if it be not already done, as I hear ſome doubt made of it in popular rumour) may be reduced into an exact proportion for the time to come; and likewiſe the computation, tale, or valuation to be made exact for the monies already beaten?

THAT done, the laſt queſtion is, (which is only proper to this place) whether the ſtamp or the image and ſuperſcription of *Britain* for the time forwards ſhould not be made the ſelf-ſame in both places, without any difference at all? A matter alſo which may be done as our law is, by your Majeſty's prerogative without act of parliament.

THESE points are points of demonſtration, *ad faciendum populum*, but ſo much the more they go to the root of your Majeſty's intention, which is to imprint and inculcate into the hearts and heads of the people, that they are one people and one nation.

OF this kind alſo I have heard it paſs abroad in ſpeech of the erection of ſome new order of knighthood, with a reference to the union, and an oath appropriate thereunto, which is a point likewiſe deſerves a conſideration. So much for the external points.

Internal points of union.

THE internal points of ſeparation are as followeth.

1. SEVERAL parliaments.
2. SEVERAL councils of ſtate.
3. SEVERAL officers of the crown.
4. SEVERAL nobilities.
5. SEVERAL laws.
6. SEVERAL courts of juſtice, trials, and proceſſes.

7. SE-

7. SEVERAL receits and finances.
8. SEVERAL admiralties and merchandizings.
9. SEVERAL freedoms and liberties.
10. SEVERAL taxes and impoſts.

As touching the ſeveral ſtates eccleſiaſtical, and the ſeveral mints and ſtandards, and the ſeveral articles and treaties, of intercourſe with foreign nations, I touched them before.

IN theſe points of the ſtrait and more inward union, there will intervene one principal difficulty and impediment growing from that root, which *Ariſtotle* in his politicks maketh to be the root of all diviſion and diſſenſion in commonwealths, and that is equality and inequality. For the realm of *Scotland* is now an ancient and noble realm, ſubſtantive of itſelf. But when this iſland ſhall be made *Britain*, then *Scotland* is no more to be conſidered as *Scotland*, but as a part of *Britain*; no more than *England* is to be conſidered as *England*, but as a part likewiſe of *Britain*; and conſequently neither of theſe are to be conſidered as things entire of themſelves, but in the proportion that they bear to the whole. And therefore let us imagine (*Nam id mente poſſumus, quod actu non poſſumus*) that *Britain* had never been divided, but had ever been one kingdom; then that part of ſoil or territory, which is comprehended under the name of *Scotland*, is in quantity (as I heard it eſteemed, how truly I know not) not paſt a third part of *Britain*; and that part of ſoil or territory which is comprehended under the name of *England*, is two parts of *Britain*, leaving to ſpeak of any difference of wealth or population, and ſpeaking only of quantity. So then if for example *Scotland* ſhould bring to parliament as much nobility as *England*, then a third part ſhould countervail two parts; *nam ſi inaequalibus aequalia addas, omnia erunt inaequalia.* And this I proteſt before God and your Majeſty, I do ſpeak not as a man born in *England*, but as a man born in *Britain*. And therefore to deſcend to the particulars:

FOR the parliaments, the conſideration of that point will fall into four queſtions. 1. Parliament.

1. THE firſt, what proportion ſhall be kept between the votes of *England* and the votes of *Scotland*?

2. THE ſecond touching the manner of propoſition, or poſſeſſing of the parliament of cauſes there to be handled; which in *England* is uſed to be done immediately by any member of the parliament, or by the prolocutor; and in *Scotland* is uſed to be done immediately by the lords of the articles; whereof the one form ſeemeth to have more liberty, and the other more gravity and maturity: and therefore the queſtion will be, whether of theſe ſhall yield to other, or whether there ſhould not be a mixture of both, by ſome commiſſions precedent to every parliament in the nature of lords of the articles, and yet not excluding the liberty of propounding in full parliament afterwards?

3. THE third, touching the orders of parliament, how they may be compounded, and the beſt of either taken?

4. THE fourth, how thoſe which by inheritance or otherwiſe, have offices of honour and ceremony in both the parliaments, as the lord ſteward with us, *&c.* may be ſatisfied and duplicity accommodated?

FOR the councils of eſtate, while the kingdoms ſtand divided, it ſhould ſeem neceſſary to continue ſeveral councils; but if your Majeſty ſhould proceed to a ſtrict union, then howſoever your Majeſty may eſtabliſh ſome provincial councils in *Scotland*, as there is here of *York*, and in the marches of *Wales*, 2. Councils of eſtate.

Wales, yet the queſtion will be, whether it will not be more convenient for your Majeſty, to have but one privy council about your Perſon, whereof the principal officers of the crown of *Scotland* to be for dignity ſake, howſoever their abiding and remaining may be as your Majeſty ſhall employ their ſervice? But this point belongeth merely and wholly to your Majeſty's royal will and pleaſure.

3. Officers of the crown. FOR the officers of the crown, the conſideration thereof will fall into theſe queſtions.

FIRST in regard of the latitude of your kingdom and the diſtance of place, whether it will not be matter of neceſſity to continue the ſeveral officers, becauſe of the impoſſibility for the ſervice to be performed by one?

THE ſecond admitting the duplicity of officers ſhould be continued, yet whether there ſhould not be a difference that one ſhould be the principal officer, and the other to be but ſpecial and ſubaltern? as for example, one to be chancellor of *Britain*, and the other to be chancellor with ſome ſpecial addition, as here of the duchy, *&c.*

THE third, if no ſuch ſpecialty or inferiority be thought fit, then whether both officers ſhould not have the title and the name of the whole iſland and precincts? as the Lord Chancellor of *England* to be Lord Chancellor of *Britain*, and the Lord Chancellor of *Scotland* to be Lord Chancellor of *Britain*, but with ſeveral proviſoes that they ſhall not intromit themſelves but within their ſeveral precincts.

4. Nobilities. FOR the nobilities, the conſideration thereof will fall into theſe queſtions.

THE firſt of their votes in parliament (which was touched before) what proportion they ſhall bear to the nobility of *England?* wherein if the proportion which ſhall be thought fit be not full, yet your Majeſty may, out of your prerogative, ſupply it; for although you cannot make fewer of *Scotland*, yet you may make more of *England*.

THE ſecond is touching the place and precedence wherein to marſhal them according to the precedence of *England* in your Majeſty's ſtyle, and according to the nobility of *Ireland*; that is, all *Engliſh* Earls firſt, and then *Scotiſh* will be thought unequal for *Scotland*. To marſhal them according to antiquity, will be thought unequal for *England*. Becauſe I hear their nobility is generally more ancient: and therefore the queſtion will be whether the indifferenteſt way were not to take them interchangeably; as for example, firſt, the ancient Earl of *England*; and then the ancient Earl of *Scotland*, and ſo *alternis vicibus?*

5. Laws. FOR the laws to make an entire and perfect union, it is a matter of great difficulty and length, both in the collecting of them, and in the paſſing of them. For firſt, as to the collecting of them, there muſt be made by the lawyers of either nation a digeſt under titles of their ſeveral laws and cuſtoms, as well common laws as ſtatutes, that they may be collated and compared, and that the diverſities may appear and be diſcerned of. And for the paſſing of them, we ſee by experience that *patrius mos* is dear to all men, and that men are bred and nouriſhed up in the love of it; and therefore how harſh changes and innovations are. And we ſee likewiſe what diſputation and argument the alteration of ſome one law doth cauſe and bring forth, how much more the alteration of the whole corps of the law? Therefore the firſt queſtion will be, whether it be not good to proceed by parts, and to take that that is moſt neceſſary, and leave the reſt to time? The parts therefore or ſubject of laws, are for this purpoſe fitlieſt diſtributed, according to that ordinary diviſion of criminal and civil, and thoſe of criminal cauſes into capital and penal.

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The ſecond queſtion therefore is, allowing the general union of laws to be too great a work to embrace, whether it were not convenient that caſes capital were the ſame in both nations; I ſay the caſes, I do not ſpeak of the proceedings or trials; that is to ſay, whether the ſame offences were not fit to be made treaſon or felony in both places?

The third queſtion is, whether caſes penal, though not capital, yet if they concern the publick ſtate, or otherwiſe the diſcipline of manners, were not fit likewiſe to be brought into one degree, as the caſe of miſpriſion of treaſon, the caſe of *praemunire*, the caſe of fugitives, the caſe of inceſt, the caſe of ſimony, and the reſt?

But the queſtion that is more urgent than any of theſe is, whether theſe caſes, at the leaſt be they of an higher or an inferior degree, wherein the fact committed, or act done in *Scotland*, may prejudice the ſtate and ſubjects of *England*, or *e converſo*, are not to be reduced into one uniformity of law and puniſhment? As for example, a perjury committed in a court of juſtice in *Scotland*, cannot be prejudicial in *England*, becauſe depoſitions taken in *Scotland* cannot be produced and uſed here in *England*. But a forgery of a deed in *Scotland*, I mean with a falſe date of *England*, may be uſed and given in evidence in *England*. So likewiſe the depopulating of a town in *Scotland*, doth not directly prejudice the ſtate of *England*: but if an *Engliſh* merchant ſhall carry ſilver and gold into *Scotland* (as he may) and thence tranſport it into foreign parts, this prejudiceth the ſtate of *England*, and may be an evaſion to all the laws of *England* ordained in that caſe; and therefore had need to be bridled with as ſevere a law in *Scotland*, as it is here in *England*.

Of this kind there are many laws.

The law of the 5th of *Richard* II. of going over without licence, if there be not the like law in *Scotland*, will be fruſtrated and evaded: for any ſubject of *England* may go firſt into *Scotland*, and thence into foreign parts.

So the laws prohibiting tranſportation of ſundry commodities, as gold, and ſilver, ordnance, artillery, corn, *&c.* if there be not a correſpondence of laws in *Scotland*, will in like manner be deluded and fruſtrate; for any *Engliſh* merchant or ſubject may carry ſuch commodities firſt into *Scotland*, as well as he may carry them from port to port in *England*: And out of *Scotland* into foreign parts, without any peril of law.

So libels may be deviſed and written in *Scotland*, and publiſhed and ſcattered in *England*.

Treasons may be plotted in *Scotland* and executed in *England*.

And ſo in many other caſes, if there be not the like ſeverity of law in *Scotland* to reſtrain offences that there is in *England*, (whereof we are here ignorant whether there be or no;) it will be a gap or ſtop even for *Engliſh* ſubjects to eſcape and avoid the laws of *England*.

But for treaſons the beſt is that by the ſtatute of 26 K. *Henry* VIII. *cap.* 13. any treaſon committed in *Scotland*, may be proceeded with in *England* as well as treaſons committed in *France*, *Rome*, or elſewhere.

For courts of juſtice, trials, proceſs, and other adminiſtration of laws, to make any alteration in either nation, it will be a thing ſo new and unwonted to either people, that it may be doubted it will make the adminiſtration of juſtice (which of all other things ought to be known and certain as the beaten way) to become intricate and uncertain. And beſides, I do not ſee that the ſeveralty of adminiſtration of juſtice, though it be by court ſovereign 6 Courts of juſtice, and adminiſtration of laws.

of laſt reſort, (I mean without appeal or error;) is any impediment at all to the union of a kingdom: as we ſee by experience in the ſeveral courts of parliament in the kingdom of *France*. And I have been always of opinion, that the ſubjects of *England* do already fetch juſtice ſomewhat far off, more than in any nation that I know, the largeneſs of the kingdom conſidered, though it be holden in ſome part by the circuits of the judges; and the two councils at *York*, and in the marches of *Wales* eſtabliſhed.

But it may be a queſtion, whether as *commune vinculum*, of the juſtice of both nations, your Majeſty ſhould not erect ſome court about your perſon in the nature of the grand council of *France*: to which court you might, by way of evocation, draw cauſes from the ordinary judges of both nations; for ſo doth the *French* King from all the courts of parliament in *France*; many of which are more remote from *Paris* than any part of *Scotland* is from *London*.

7. Receits, Finances, and Patrimonies of the crown.

For receits and finances I ſee no queſtion will ariſe, in regard it will be matter of neceſſity to eſtabliſh in *Scotland* a receit of treaſure for payments, and erogations to be made in thoſe parts: and for the treaſure of *Spare*, in either receits, the cuſtodies thereof may well be ſeveral; conſidering by your Majeſty's commandment, they may be at all times removed or diſpoſed according to your Majeſty's occaſions.

For the patrimonies of both crowns, I ſee no queſtions will ariſe, except your Majeſty would be pleaſed to make one compounded annexation, for an inſeparable patrimony to the crown out of the lands of both nations: and ſo the like for the principality of *Britain*, and for other appennages of the reſt of your children; erecting likewiſe ſuch duchies and honours compounded of the poſſeſſions of both nations as ſhall be thought fit.

8. Admiralty, navy, and merchandizing.

For admiralty or navy I ſee no great queſtion will ariſe; for I ſee no inconvenience for your Majeſty to continue ſhipping in *Scotland*. And for the juriſdiction of the admiralties, and the profits and caſualties of them, they will be reſpective unto the coaſts, over-againſt which the ſeas lie and are ſituated; as it is here with the admiralties of *England*.

And for merchandizing it may be a queſtion, whether that the companies of the merchant adventurers of the *Turkey* merchants and the *Muſcovite* merchants, (if they ſhall be continued) ſhould not be compounded of merchants of both nations, *Engliſh* and *Scotiſh*. For to leave trade free in the one nation, and to have it reſtrained in the other, may perchance breed ſome inconvenience.

9. Freedoms and liberties.

For freedoms and liberties the charters of both nations may be reviewed; and of ſuch liberties as are agreeable and convenient for the ſubjects and people of both nations, one great charter may be made and confirmed to the ſubjects of *Britain*; and thoſe liberties which are peculiar or proper to either nation to ſtand in ſtate as they do.

10. Taxes and impoſts.

But for impoſts and cuſtoms, it will be a great queſtion how to accommodate them and reconcile them: for if they be much eaſier in *Scotland*, than they be here in *England* (which is a thing I know not;) then this inconvenience will follow; that the merchants of *England* may unlade in the ports of *Scotland*; and this kingdom to be ſerved from thence, and your Majeſty's cuſtoms abated.

And for the queſtion, whether the *Scotiſh* merchants ſhould pay ſtrangers cuſtom in *England*, that reſteth upon the point of naturalization, which I touched before.

Thus have I made your Majeſty a brief and naked memorial of the articles and points of this great cauſe, which may ſerve only to excite and ſtir

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up your Majeſty's royal judgment, and the judgment of wiſer men whom you will be pleaſed to call to it: wherein I will not preſume to perſuade or diſſuade any thing; nor to interpoſe mine own opinion, but do expect light from your Majeſty's royal directions; unto the which I ſhall ever ſubmit my judgment, and apply my travails. And I moſt humbly pray your Majeſty in this which is done to pardon my errors, and to cover them with my good intention and meaning and deſire I have to do your Majeſty ſervice, and to acquit the truſt that was repoſed in me, and chiefly in your Majeſty's benign and gracious acceptation.

SPEECHES.

SPEECHES.

A SPEECH in PARLIAMENT,

39 of ELIZABETH, upon the Motion of Subſidy.

AND pleaſe you, Mr. Speaker, I muſt conſider the time which is ſpent; but yet ſo, as I muſt conſider alſo the matter, which is great. This great cauſe was, at the firſt, ſo materially and weightily propounded; and after, in ſuch ſort perſuaded and enforced; and by him that laſt ſpake, ſo much time taken, and yet to good purpoſe; as I ſhall ſpeak at a great diſadvantage: But becauſe it hath been always uſed, and the mixture of this houſe doth ſo require it, that in cauſes of this nature there be ſome ſpeech and opinion, as well from perſons of generality, as by perſons of authority, I will ſay ſomewhat, and not much: wherein it ſhall not be fit for me to enter into, or to inſiſt upon ſecrets, either of her Majeſty's coffers, or of her council; but my ſpeech muſt be of a more vulgar nature.

I WILL not enter, Mr. Speaker, into a laudative ſpeech of the high and ſingular benefits, which, by her Majeſty's moſt politick and happy government we receive, thereby to incite you to a retribution; partly, becauſe no breath of man can ſet them forth worthily; and partly, becauſe I know her Majeſty in her magnanimity doth beſtow her benefits like her freeſt patents, *abſque aliquo inde reddendo*; not looking for any thing again (if it were in reſpect only of her particular) but love and loyalty. Neither will I now at this time put the caſe of this realm of *England* too preciſely; how it ſtandeth with the ſubject in point of payments to the crown: though I could make it appear by demonſtration, what opinion ſoever be conceived, that never ſubjects were partakers of greater freedom and eaſe; and that whether you look abroad into other countries at this preſent time, or look back to former times in this our own country, we ſhall find an exceeding difference in matter of taxes; which now I reſerve to mention; not ſo much in doubt to acquaint your ears with foreign ſtrains, or to dig up the ſepulchres of buried and forgotten impoſitions, which in this caſe, as by way of compariſon, it is neceſſary you underſtand; but becauſe ſpeech in the houſe is fit to perſuade the general point, and particularly is more proper and ſeaſonable for the committee: neither will I make any obſervations upon her Majeſty's manner of expending and iſſuing treaſure; being not upon exceſſive and exorbitant donatives; nor upon ſumptuous and unneceſſary triumphs, buildings, or like magnificence, but upon the preſervation, protection, and honour of the realm: For I dare not ſcan upon her Majeſty's actions, which it becometh me rather to admire in ſilence, than to gloſs or diſcourſe upon them, though with never ſo good a meaning. Sure I am that the treaſure that cometh from you to her Majeſty is but as a vapour which riſeth from the earth, and gathereth into a cloud, and ſtayeth not there long; but upon the ſame earth it falleth again: and what if ſome drops of this do fall upon *France* or *Flanders*? It is like a

ſweet

ſweet odour of honour and reputation to our nation throughout the world. But I will only inſiſt upon the natural and inviolate law of preſervation.

It is a truth, Mr. Speaker, and a familiar truth, that ſafety and preſervation is to be preferred before benefit or encreaſe, inaſmuch as thoſe counſels which tend to preſervation ſeem to be attended with neceſſity: whereas thoſe deliberations which tend to benefit, ſeem only accompanied with perſuaſion. And it is ever gain and no loſs, when at the foot of the account there remains the purchaſe of ſafety. The prints of this are every where to be found: the patient will ever part with ſome of his blood to ſave and clear the reſt: the ſea-faring man will, in a ſtorm, caſt over ſome of his goods to ſave and aſſure the reſt: the huſbandman will afford ſome foot of ground for his hedge and ditch, to fortify and defend the reſt. Why, Mr. Speaker, the diſputer will, if he be wiſe and cunning, grant ſomewhat that ſeemeth to make againſt him, becauſe he will keep himſelf within the ſtrength of his opinion, and the better maintain the reſt. But this place advertiſeth me not to handle the matter in a common place. I will now deliver unto you that, which upon a *probatum eſt*, hath wrought upon my ſelf, knowing your affections to be like mine own. There hath fallen out, ſince the laſt parliament, four accidents or occurrents of ſtate; things publiſhed and known to you all; by every one whereof it ſeemeth to me in my vulgar underſtanding, that the danger of this realm is encreaſed: which I ſpeak not by way of apprehending fear, for I know I ſpeak to *Engliſh* courages; but by way of preſſing proviſion: for I do find, Mr. Speaker, that when kingdoms and ſtates are entred into terms and reſolutions of hoſtility one againſt the other; yet they are many times reſtrained from their attempts by four impediments:

The firſt is by this ſame *aliud agere*; when they have their hands full of other matters, which they have embraced, and ſerveth for a diverſion of their hoſtile purpoſes.

The next is, when they want the commodity or opportunity of ſome places of near approach.

The third, when they have conceived an apprehenſion of the difficulty and churliſhneſs of the enterpriſe, and that it is not prepared to their hand.

And the fourth is, when a ſtate, thro' the age of the Monarch, groweth heavy and indiſpoſed to actions of great peril and motion; and this dull humour is not ſharpened nor inflamed by any provocations or ſcorns. Now if it pleaſe you to examine, whether by removing the impediments in theſe four kinds the danger be not grown ſo many degrees nearer us by accidents, as I ſaid, freſh, and all dated ſince the laſt parliament.

Soon after the laſt parliament, you may be pleaſed to remember how the *French* King revolted from his religion; whereby every man of common underſtanding may infer, that the quarrel between *France* and *Spain* is more reconcilable, and a greater inclination of affairs to a peace than before: which ſuppoſed, it followeth *Spain* ſhall be more free to intend his malice againſt this realm.

Since the laſt parliament it is alſo notorious in every man's knowledge and remembrance, that the *Spaniards* have poſſeſſed themſelves of that avenue and place of approach for *England*, which was never in the hands of any King of *Spain* before; and that is *Calais*; which in true reaſon and conſideration of eſtate, of what value or ſervice it is I know not; but in common underſtanding, it is a knocking at our doors.

SINCE the laſt parliament alſo that ulcer of *Ireland*, which indeed brake forth before, hath run on and raged more: which cannot but be a great attractive to the ambition of the council of *Spain*; who by former experience know of how tough a complexion this realm of *England* is to be aſſailed: and therefore, as rheums and fluxes of humours, is like to reſort to that part which is weak and diſtempered.

AND laſtly, it is famous now, and ſo will be many ages hence, how by theſe two ſea-journeys we have braved him, and objected him to ſcorn: ſo that no blood can be ſo frozen or mortified, but muſt needs take flames of revenge upon ſo mighty a diſgrace.

So as this concurrence of concurrents, all ſince our laſt aſſembly, ſome to deliver and free our enemies, ſome to advance and bring him on his way, ſome to tempt and allure him, ſome to ſpur on and provoke him, cannot but threaten an encreaſe of our peril in great proportion.

LASTLY, Mr. Speaker, I will but reduce to the memory of this houſe one other argument, for ample and large providing and ſupplying treaſure; and this it is.

I SEE men do with great alacrity and ſpirit proceed when they have obtained a courſe they long wiſhed for and were reſtrained from. My ſelf can remember, both in this honourable aſſembly, and in all other places of this realm, how forward and affectionate men were to have an invaſive war. Then we would ſay, a defenſive war was like eating and conſuming intereſt, and needs we would be adventurers and aſſailants; *habes quod tota mente petiſti:* Shall we not now make it good? eſpecially when we have taſted ſo proſperous fruit of our deſires.

THE firſt of theſe expeditions invaſive was atchieved with great felicity, raviſhed a ſtrong and famous port in the lap and boſom of their high countries; brought them to ſuch deſpair as they fired themſelves and their *Indian* fleet in ſacrifice, as a good odour and incenſe unto God for the great and barbarous cruelties which they have committed upon the poor *Indians*, whither that fleet was ſailing; diſordered their reckonings ſo, as the next news we heard of nothing but proteſting of bills and breaking credit.

THE ſecond journey was with notable reſolution born up againſt weather and all difficulties; and beſides the ſucceſs in amuſing him and putting him to infinite charge, ſure I am it was like a *Tartar*'s or *Parthian*'s bow, which ſhooteth backward, and had a moſt ſtrong and violent effect and operation both in *France* and *Flanders*; ſo that our neighbours and confederates have reaped the harveſt of it; and while the life-blood of *Spain* went inward to the heart, the outward limbs and members trembled, and could not reſiſt. And laſtly, we have a perfect account of all the noble and good blood that was carried forth, and of all our ſea-walls and good ſhipping without mortality of perſons, wreck of veſſels, or any manner of diminution. And theſe have been the happy effects of our ſo long and ſo much deſired invaſive war.

To conclude, Mr. Speaker, therefore, I doubt not but every man will conſent that our gift muſt bear theſe two marks and badges: the one of the danger of the realm by ſo great a proportion, ſince the laſt parliament, encreaſed; the other of the ſatisfaction we receive in having obtained our ſo earneſt and ardent deſire of an invaſive war.

A

SPEECH

MADE BY

Sir *FRANCIS BACON*, Kt.

Choſen by the COMMONS to preſent a petition touching Purveyors, delivered to his MAJESTY in the withdrawing-chamber at *Whitehall*, in the Parliament held 1° & 2° *Jacobi*, the firſt Seſſion.

IT is well known to your Majeſty, (excellent King) that the Emperors of *Rome*, for their better glory and ornament, did uſe in their titles the additions of the countries and nations where they had obtained victories: as *Germanicus*, *Britannicus*, and the like. But after all thoſe names, as in the higher place, followed the name of *Pater Patriae*, as the greateſt name of all human honour immediately preceding that name of *Auguſtus*; whereby they took themſelves to expreſs ſome affinity that they had (in reſpect of their office) with divine honour. Your Majeſty might, with good reaſon, aſſume unto your ſelf many of thoſe other names; as *Germanicus*, *Saxonicus*, *Britannicus*, *Francicus*, *Danicus*, *Gothicus*, and others, as appertaining to you not by blood-ſhed, (as they bare them) but by blood; your Majeſty's royal perſon being a noble confluence of ſtreams and veins wherein the royal blood of many kingdoms of *Europe* are met and united. But no name is more worthy of you, nor may more truly be aſcribed unto you, than that name of father of your people, which you bear and expreſs not in the formality of your ſtyle, but in the real courſe of your government. We ought not to ſay unto you as was ſaid to *Julius Caeſar*; *Quae miremur, habemus; quae laudemus, expectamus:* That we have already wherefore to admire you, and that now we expect ſomewhat for which to commend you: for we may (without ſuſpicion of flattery) acknowledge, that we have found in your Majeſty great cauſe, both of admiration and commendation. For great is the admiration, wherewith you have poſſeſſed us ſince this parliament began in thoſe two cauſes wherein we have had acceſs unto you, and heard your voice: That of the return of Sir *Francis Goodwin*, and that of the union; whereby it ſeemeth unto us, the one of theſe being ſo ſubtile a queſtion of law; and the other ſo high a cauſe of eſtate, that as the ſcripture ſaith of the wiſeſt King, *that his heart was as the ſands of the ſea*; which, though it be one of the largeſt and vaſteſt bodies, yet it conſiſteth of the ſmalleſt motes and portions: So, I ſay, it appeareth unto us in theſe two examples, that God hath given your Majeſty a rare ſufficiency, both to compaſs and fathom the greateſt matters, and to diſcern the leaſt. And for matter of praiſe and commendation, which chiefly belongeth to goodneſs, we cannot but with great thankfulneſs profeſs, that your Majeſty, within the circle of one year of your reign, (*infra orbem anni vertentis*) hath endeavoured to unite your church, which was divided; to ſupply your nobility, which was diminiſhed, and to eaſe your people in caſes where they were burthened and oppreſſed.

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In the laſt of theſe, your high merits, that is, the eaſe and comfort of your people, doth fall out to be comprehended; the meſſage which I now bring unto your Majeſty, concerning the great grievance ariſing by the manifold abuſes of purveyors, differing in ſome degree from moſt of the things wherein we deal and conſult: for it is true that the knights, citizens, and burgeſſes, in parliament aſſembled, are a repreſentative body of your commons and third eſtate; and in many matters, although we apply our ſelves to perform the truſt of thoſe that choſe us, yet it may be, we do ſpeak much out of our own ſenſes and diſcourſes. But in this grievance, being of that nature whereunto the poor people is moſt expoſed, and men of quality leſs; we ſhall moſt humbly deſire your Majeſty to conceive, that your Majeſty doth not hear our opinions or ſenſes, but the very groans and complaints themſelves of your commons, more truly and vively than by repreſentation. For there is no grievance in your kingdom ſo general, ſo continual, ſo ſenſible, and ſo bitter unto the common ſubject, as this whereof we now ſpeak; wherein it may pleaſe your Majeſty to vouchſafe me leave, firſt, to ſet forth unto you the dutiful and reſpective carriage of our proceeding; next, the ſubſtance of our petition; and thirdly, ſome reaſons and motives which in all humbleneſs we do offer to your Majeſty's royal conſideration or commiſeration; we aſſuring our ſelves that never King reigned that had better notions of head, and motions of heart, for the good and comfort of his loving ſubjects.

For the firſt; in the courſe of remedy which we deſire, we pretend not, nor intend not, in any ſort, to derogate from your Majeſty's prerogative, nor to touch, diminiſh or queſtion any of your Majeſty's regalities or rights. For we ſeek nothing but the reformation of abuſes, and the execution of former laws whereunto we are born. And although it be no ſtrange thing in parliament for new abuſes to crave new remedies, yet nevertheleſs in theſe abuſes, (which if not in nature, yet in extremity and height of them are moſt of them new) we content our ſelves with the old laws: only we deſire a confirmation and quickening of them in their execution; ſo far are we from any humour of innovation or incroachment.

As to the court of the green-cloth, ordained for the proviſion of your Majeſty's moſt honourable houſhold, we hold it ancient, we hold it reverend. Other courts reſpect your politick perſon, but that reſpects your natural perſon. But yet, notwithſtanding, moſt excellent King, to uſe that freedom which to ſubjects that pour out their griefs before ſo gracious a King, is allowable, we may very well alledge unto your Majeſty, a compariſon or ſimilitude uſed by one of the fathers in another matter, and not unfitly repreſenting our caſe in this point: and it is of the leaves and roots of nettles; the leaves are venomous and ſtinging where they touch; the root is not ſo, but is without venom or malignity: and yet it is that root that bears and ſupports all the leaves. This needs no further application.

St. *Auguſtin.*

To come now to the ſubſtance of our petition. It is no other than, by the benefit of your Majeſty's laws, to be relieved of the abuſes of purveyors; which abuſes do naturally divide themſelves into three ſorts: the firſt they take in kind, that they ought not to take; the ſecond they take in quantity, a far greater proportion than cometh to your Majeſty's uſe; the third they take in an unlawful manner, in a manner (I ſay) directly and expreſſly prohibited by divers laws.

For the firſt of theſe, I am a little to alter their name; for inſtead of takers, they become taxers; inſtead of taking proviſion for your Majeſty's ſervice, they tax your people, *ad redimendam vexationem:* impoſing upon them,

and

and extorting from them divers ſums of money, ſometimes in groſs, ſometimes in the nature of ſtipends annually paid, *ne noceant*, to be freed and eaſed of their oppreſſion. Again, they take trees, which by law they cannot do; timber-trees which are the beauty, countenance, and ſhelter of mens houſes; that men have long ſpared from their own purſe and profit, that men eſteem (for their uſe and delight) above ten times the value; that are a loſs which men cannot repair or recover. Theſe do they take, to the defacing and ſpoiling of your ſubjects manſions and dwellings, except they may be compounded with to their own appetites. And if a gentleman be too hard for them while he is at home, they will watch their time when there is but a bailiff or a ſervant remaining, and put the axe to the root of the tree, ere ever the maſter can ſtop it. Again, they uſe a ſtrange and moſt unjuſt exaction, in cauſing the ſubjects to pay poundage of their own debts, due from your Majeſty unto them: ſo as a poor man, when he hath had his hay, or his wood, or his poultry (which perchance he was full loth to part with, and had for the proviſion of his own family, and not to put to ſale,) taken from him, and that not at a juſt price, but under the value, and cometh to receive his money, he ſhall have after the rate of twelve pence in the pound abated for poundage of his due payment, upon ſo hard conditions. Nay farther, they are grown to that extremity, (as is affirmed, though it be ſcarce credible, ſave that in ſuch perſons all things are credible) that they will take double poundage, once when the debenture is made, and again the ſecond time when the money is paid.

For the ſecond point (moſt gracious Sovereign) touching the quantity which they take far above that which is anſwer'd to your Majeſty's uſe: they are the only multipliers in the world; they have the art of multiplication. For it is affirmed unto me by divers gentlemen of good report, and experience in theſe cauſes, as a matter which I may ſafely avouch before your Majeſty, (to whom we owe all truth, as well of information as ſubjection,) that there is no pound profit which redoundeth to your Majeſty in this courſe, but induceth and begetteth three pound damage upon your ſubjects, beſides the diſcontentment. And to the end they make their ſpoil more ſecurely, what do they? Whereas divers ſtatutes do ſtrictly provide, that whatſoever they take, ſhall be regiſter'd and atteſted, to the end, that by making a collation of that which is taken from the country, and that which is anſwered above, their deceits might appear; they, to the end to obſcure their deceits, utterly omit the obſervation of this, which the law preſcribeth.

And therefore to deſcend, if it may pleaſe your Majeſty, to the third ſort of abuſe, which is of the unlawful manner of their taking, whereof this omiſſion is a branch; and it is ſo manifold, as it rather aſketh an enumeration of ſome of the particulars, than a proſecution of all. For their price by law they ought to take as they can agree with the ſubject; by abuſe they take, at an impoſed and enforced price: by law they ought to make but one appriſement by neighbours in the country; by abuſe they make a ſecond appriſement at the court-gate; and when the ſubject's cattle come up many miles lean, and out of plight, by reaſon of their travel, then they prize them a-new at an abated price: by law they ought to take between ſun and ſun; by abuſe they take by twilight, and in the night-time, a time well choſen for malefactors: by law they ought not to take in the high-ways, (a place by your Majeſty's high prerogative protected, and by ſtatute by ſpecial words excepted;) by abuſe they take in the ways in contempt of your

Majeſty's prerogative and laws: by law they ought to ſhew their commiſſion, and the form of commiſſion is by law ſet down: the commiſſions they bring down, are againſt the law; and becauſe they know ſo much, they will not ſhew them. A number of other particulars there are, whereof I have given your Majeſty a taſte; ſo the chief of them upon deliberate advice are ſet down in writing by the labour of ſome committees, and approbation of the whole houſe, more particularly and lively than I can expreſs them: my ſelf having them at the ſecond hand by reaſon of my abode above. But this writing is a collection of theirs who dwell amongſt the abuſes of theſe offenders, and the complaints of the people; and therefore muſt needs have a more perfect underſtanding of all the circumſtances of them.

It remaineth only that I uſe a few words, the rather to move your Majeſty in this cauſe: a few words, I ſay a very few; for neither need ſo great enormities any aggravating, neither needeth ſo great grace, as uſeth of it ſelf to flow from your Majeſty's princely goodneſs, any artificial perſuador. There be two things only which I think good to ſet before your Majeſty; the one the example of your moſt noble progenitors Kings of this realm, who from the firſt King that endowed this kingdom with the great charters of their liberties, until the laſt, all ſave one (who as he was ſingular in many excellent things, ſo I would he had not been alone in this) have ordained every one of them in their ſeveral reigns, ſome laws or law againſt this kind of offenders; and eſpecially the example of one of them, that King, who for his greatneſs, wiſdom, glory, and union of ſeveral kingdoms, reſembleth your Majeſty moſt, both in virtue and fortune, King *Edward* III. who in his time only, made ten ſeveral laws againſt this miſchief. The ſecond is the example of God himſelf; who hath ſaid and pronounced, *That he will not hold him guiltleſs that taketh his name in vain.* For all theſe great miſdemeanors are committed in and under your Majeſty's name: and therefore we hope your Majeſty will hold them twice guilty, that commit theſe offences; once for the oppreſſing of the people, and once more for doing it under the colour and abuſe of your Majeſty's moſt dreaded and beloved name. So then I will conclude with the ſaying of *Pindarus*, *optima res aqua*; not for the excellency, but for the common uſe of it; and ſo contrariwiſe the matter of abuſe of purveyance, (if it be not the moſt heinous abuſe,) yet certainly it is the moſt common and general abuſe of all others in this kingdom.

It reſteth, that according to the command laid upon me, I do in all humbleneſs preſent this writing to your Majeſty's royal hands, with the moſt humble petition on the behalf of the commons, that as your Majeſty hath been pleaſed to vouchſafe your gracious audience to hear me ſpeak, ſo you would be pleaſed to enlarge your patience to hear this writing read, which is more material.

A

SPEECH

USED BY

Sir *FRANCIS BACON*, Kt.

In the Honourable Houſe of Commons, *quinto* JACOBI,

Concerning the ARTICLE of the GENERAL NATURALIZATION of the *Scotiſh* Nation.

IT may pleaſe you, Maſter Speaker, preface I will uſe none, but put my ſelf upon your good opinion, to which I have been accuſtomed, beyond my deſervings; neither will I hold you in ſuſpenſe what way I will chuſe, but now at the firſt declare my ſelf, that I mean to counſel the houſe to naturalize this nation, wherein nevertheleſs I have a requeſt to make unto you, which is of more efficacy to the purpoſe I have in hand than all that I ſhall ſay afterwards. And it is the ſame requeſt, which *Demoſthenes* did more than once in great cauſes of eſtate, make to the people of *Athens*, *ut cum calculis ſuffragiorum ſumant magnanimitatem reipublicae*, that when they took into their hands the balls, whereby to give their voices, (according as the manner of them was) they would raiſe their thoughts, and lay aſide thoſe conſiderations which their private vocations and degrees might miniſter and repreſent unto them, and would take upon them cogitations and minds agreeable to the dignity and honour of the eſtate.

FOR, Maſter Speaker, as it was aptly and ſharply ſaid by *Alexander* to *Parmenio*, when upon their recital of the great offers which *Darius* made, *Parmenio* ſaid unto him, I would accept theſe offers, were I as *Alexander:* he turned it upon him again, So would I, ſaith he, were I as *Parmenio*. So in this cauſe, if an honeſt *Engliſh* merchant; (I do not ſingle out that ſtate in diſgrace, for this iſland ever held it honourable, but only for an inſtance of a private profeſſion) if an *Engliſh* merchant ſhould ſay, Surely I would proceed no farther in the union, were I as the King; it might be reaſonably anſwered, No more would the King, were he as an *Engliſh* merchant. And the like may be ſaid of a gentleman in the country, be he never ſo worthy or ſufficient, or of a lawyer be he never ſo wiſe or learned; or of any other particular condition of men in this Kingdom: for certainly, Maſter Speaker, if a man ſhall be only or chiefly ſenſible of thoſe reſpects which his particular vocation and degree ſhall ſuggeſt and infuſe into him, and not enter into true and worthy conſiderations of eſtates, he ſhall never be able aright to give counſel, or take counſel in this matter. So that if this requeſt be granted, I account the cauſe obtained.

BUT to proceed to the matter itſelf: all conſultations do reſt upon queſtions comparative; for when a queſtion is *de vero*, it is ſimple, for there is but one truth; but when a queſtion is *de bono*, it is for the moſt part comparative; for there be differing degrees of good and evil, and the beſt of the

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good is to be preferred and choſen, and the worſt of the evil is to be declined and avoided; and therefore in a queſtion of this nature you may not look for anſwer proper to every inconvenience alledged; for ſomewhat that cannot be eſpecially anſwered may nevertheleſs be encountred and over-weighed by matter of greater moment; and therefore the matter which I ſhall ſet forth unto you, will naturally receive the diſtribution of three parts.

The anſwer to the inconveniences objected concerning the naturalization.

FIRST, an anſwer to thoſe inconveniences which have been alledged to enſue, if we ſhould give way to this naturalization, which I ſuppoſe you will find not to be ſo great as they have been made; but that much droſs is put into the balance to help to make weight.

SECONDLY, an encounter againſt the remainder of theſe inconveniences, which cannot properly be anſwered but by much greater inconveniences, which we ſhall incur if we do not proceed to this naturalization.

THIRDLY, an encounter likewiſe, but of another nature, that is, of the good and benefit which we ſhall draw and purchaſe to our ſelves by proceeding to this naturalization. And yet to avoid confuſion, which ever more followeth upon too much generality, it is neceſſary for me (before I proceed to perſuaſion) to uſe ſome diſtribution of the points or parts of naturalization, which certainly can be no better, or none other than the ancient diſtinction of *jus civitatis*, *jus ſuffragii vel tribus*, and *jus petitionis ſive honorum:* for all ability and capacity is either of private intereſt of *meum & tuum*, or of publick ſervice; and the publick conſiſteth chiefly either in voice or in action or office. Now it is the firſt of theſe, Maſter Speaker, that I will only handle at this time and in this place, and refer the other two for a committee, becauſe they receive more diſtinction and reſtriction.

To come therefore to the inconveniences alledged on the other part, the firſt of them is, that there may enſue of this naturalization a ſurcharge of people upon this realm of *England*, which is ſuppoſed already to have the full charge and content; and therefore there cannot be an admiſſion of the adoptive without a diminution of the fortunes and conditions of thoſe that are native ſubjects of this realm. A grave objection, Maſter Speaker, and very dutiful; for it proceeds not of any unkindneſs to the *Scotiſh* nation, but of a natural faſtneſs to our ſelves; for that anſwer of the virgins, *ne forte non ſufficiat vobis & nobis*, proceeds not out of any envy or malign humour, but out of providence, and the original charity which begins with our ſelves. And I muſt confeſs, Maſter Speaker, that as the gentleman ſaid, when *Abraham* and *Lot*, in regard of the greatneſs of their families, grew pent and ſtraitened, brethren though they were, they grew to difference, and to thoſe words, *vade tu ad dexteram, & ego ad ſiniſtram*, &c. But certainly, I ſhould never have brought that example on that ſide; for we ſee what followed of it, how that this ſeparation *ad dexteram & ad ſiniſtram*, cauſed the miſerable captivity of the one brother, and the dangerous, though proſperous war of the other, for his reſcue and recovery.

BUT to this objection, Maſter Speaker, being ſo weighty and ſo principal, I mean to give three ſeveral anſwers, every one of them being to my underſtanding by it ſelf ſufficient.

The opinion of the number of the *Scotiſh* Nation.

THE firſt of them is, that this opinion of the number of the *Scotiſh* nation that ſhould be likely to plant themſelves here amongſt us will be found to be a thing rather in conceit than in event; for, Maſter Speaker, you ſhall find thoſe plauſible ſimilitudes of a tree that will thrive the better if it be removed into the more fruitful ſoil, and of ſheep or cattel, that if they find a gap or paſſage open will leave the more barren paſture, and get into the more

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rich and plentiful, to be but arguments merely ſuperficial, and to have no ſound reſemblance with the tranſplanting or transferring of families; for the tree, we know by nature, as ſoon as it is ſet in the better ground, can faſten upon it, and take nutriment from it; and a ſheep, as ſoon as he gets into the better paſture, what ſhould let him to graze or feed? But there belongeth more, I take it, to a family or particular perſon, that ſhall remove from one nation to another: for if, Maſter Speaker, they have not ſtock, means, acquaintances, cuſtom, habitation, trades, countenance, and the like, I hope you doubt not but they will ſtarve in the midſt of the rich paſture, and are far enough from grazing at their pleaſure: and therefore in this point, which is conjectural, experience is the beſt guide; for the time paſt is a pattern of the time to come. I think no man doubteth, Maſter Speaker, but his Majeſty's firſt coming in, was as the greateſt ſpring-tide for the confluence and entrance of that nation. Now I would fain underſtand in theſe four years ſpace, and in this fulneſs and ſtrength of the current and tide, how many families of *Scotſmen* are planted in the cities, boroughs, and towns of this kingdom; for I do aſſure my ſelf, that of more than ſome perſons of quality, about his Majeſty's perſon here at court, and in *London*, and ſome other inferior perſons, that have a dependance upon them, the return and certificate, if ſuch a ſurvey ſhould be made, would be of a number extremely ſmall: I report me to all your knowledges of the places where you inhabit.

Now, Maſter Speaker, as I ſaid, *ſi in ligno viridi ita fit, quit fiet in arido?* I am ſure there will be no more ſuch ſpring-tides. But you will tell me of a multitude of families of the *Scotiſh* nation in *Polonia*; and if they multiply in a country ſo far, how much more here at hand? For that, Maſter Speaker, you muſt impute it of neceſſity to ſome ſpecial accident of time and place that draws them thither: For you ſee plainly before your eyes, that in *Germany*, which is much nearer, and in *France*, where they are invited with privileges, and the very privilege of naturalization, and yet no ſuch number is to be found; ſo, it cannot either be nearneſs of place, or privilege of perſon, that is the cauſe. But ſhall I tell you, Maſter Speaker, what I think? Of all places in the world, near or far off, they will never take that courſe of life in this kingdom, which they content themſelves with in *Poland*; for we ſee it to be the nature of all men that they will rather diſcover poverty abroad, than at home. There is never a gentleman that hath over-reached himſelf in expences, and thereby muſt abate his countenance, but he will rather travel, and do it abroad, than at home; and we know well they have good high ſtomachs, and have ever ſtood in ſome terms of emulation with us: and therefore they will never live here, except they live in good ſort. So as I aſſure you, Maſter Speaker, I am of opinion that the ſtrife, which we now have to admit them, will have like ſequel as that contention had between the nobility and people of *Rome*, for the admitting of a *plebeian* conſul; which whilſt it was in paſſage was very vehement, and mightily ſtood upon, and when the people had obtained it, they never made any *plebeian* conſul, not in 60 years after: and ſo will this be for many years, as I am perſuaded, rather a matter in opinion and reputation, than in uſe or effect; and this is the firſt anſwer that I give to this main inconvenience pretended of ſurcharge of people.

England not peopled to the full.

The ſecond anſwer which I give to this objection, is this, I muſt have leave to doubt, Maſter Speaker, that this realm of *England* is not yet peopled to the full; for certain it is, that the territories of *France*, *Italy*, *Flanders*, and ſome part of *Germany*, do in equal ſpace of ground bear and contain a far

greater quantity of people, if they were muſtered by the poll; neither can I ſee, that this kingdom is ſo much inferior unto thoſe foreign parts in fruitfulneſs, as it is in population; which makes me conceive we have not our full charge. Beſides, I do ſee manifeſtly amongſt us, the badges and tokens rather of ſcarceneſs, than of preſs of people, as drowned grounds, commons, waſtes, and the like; which is a plain demonſtration that howſoever there may be an over-ſwelling throng and preſs of people here about *London*, which is moſt in our eye, yet the body of the kingdom is but thin ſown with people: And whoſoever ſhall compare the ruins and decays of ancient towns in this realm, with the erections and augmentations of new, cannot but judge that this realm hath been far better peopled in former times; it may be in the Heptarchy, or otherwiſe: for generally the rule holdeth, the ſmaller the ſtate, the greater the population *pro rata*. And whether this be true or no, we need not ſeek farther, than to call to our remembrance how many of us ſerve here in this place for deſolate and decayed boroughs.

Mediterrane, not maritime countries, ſurcharged with people.

AGAIN, Maſter Speaker, whoſoever looketh into the principles of eſtate, muſt hold that it is the mediterrane countries, and not the maritime, which need to fear ſurcharge of people; for all ſea-provinces, and eſpecially *Flanders*, have another element beſides the earth and ſoil, for their ſuſtentation. For what an infinite number of people are, and may be, ſuſtained by fiſhing, carriage by ſea, and merchandizing? Wherein again I do diſcover, that we are not at all pinched by the multitude of people; for if we were, it were not poſſible that we ſhould relinquiſh and reſign ſuch an infinite benefit of fiſhing to the *Flemings*, as it is well known we do. And therefore I ſee, that we have waſtes by ſea, as well as by land; which ſtill is an infallible argument that our induſtry is not awakened to ſeek maintenance by any great preſs or charge of people. And laſtly, Maſter Speaker, there was never any kingdom in the ages of the world, had, I think, ſo fair and happy means to iſſue and diſcharge the multitude of their people (if it were too great) as this kingdom hath, in regard of that deſolate and waſted realm of *Ireland*; which being a country bleſſed with almoſt all the dowries of nature, as rivers, havens, woods, quarries, good ſoil, and temperate climate, and now at laſt under his Majeſty bleſt alſo with obedience, doth, as it were, continually call unto us for our colonies and plantations. And ſo I conclude my ſecond anſwer, to this pretended inconvenience of ſurcharge of people.

THE third anſwer, Maſter Speaker, which I give, is this; I demand what is the worſt effect that can follow the ſurcharge of people? Look into all ſtories, and you ſhall find it none other than ſome honourable war, for the enlargement of their borders, which find themſelves pent upon foreign parts; which inconvenience, in a valourous and warlike nation, I know not whether I ſhould term an inconvenience or no; for the ſaying is moſt true, though in another ſenſe, *omne ſolum forti patria*. It was ſpoken indeed of the patience of an exiled man, but it is no leſs true of the valour of a warlike nation. And certainly, Maſter Speaker, I hope I may ſpeak it without offence, that if we did hold our ſelves worthy, whenſoever a juſt cauſe ſhould be given, either to recover our ancient rights, or to revenge our late wrongs, or to attain the honour of our anceſtors, or to enlarge the patrimony of our poſterities, we would never in this manner forget the conſiderations of amplitude and greatneſs, and fall at variance about profit and reckonings; fitter a great deal for private perſons, than for parliaments and kingdoms. And thus, Maſter Speaker, I leave this firſt objection to ſuch ſatisfaction as you have heard.

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THE ſecond objection is, that the fundamental laws of both theſe kingdoms of *England* and *Scotland* are yet diverſe and ſeveral; nay more that it is declared by the inſtrument, that they ſhall ſo continue, and that there is no intent in his Majeſty to make innovation in them; and therefore that it ſhould not be ſeaſonable to proceed to this naturalization, whereby to endow them with our rights and privileges, except they ſhould likewiſe receive and ſubmit themſelves to our laws; and this objection likewiſe (Mr. Speaker) I allow to be a weighty objection, and worthy to be well anſwered and diſcuſſed. The fundamental laws of *England* and *Scotland* are diverſe and ſeveral.

THE anſwer which I ſhall offer is this: It is true, for my own part, (Mr. Speaker) that I wiſh the *Scotiſh* nation governed by our laws, for I hold our laws with ſome reducements worthy to govern, and it were the world: but this is that which I ſay, and I deſire therein your attention, that according to true reaſon of eſtate, naturalization is in order firſt and precedent to union of laws; in degree a leſs matter than union of laws; and in nature ſeparable, and not inſeparable from union of laws; for naturalization doth but take out the marks of a foreigner, but union of laws makes them entirely as our ſelves. Naturalization taketh away ſeparation; but union of laws doth take away diſtinction. Do we not ſee, Maſter Speaker, that in the adminiſtration of the world under the great monarch God himſelf, that his laws are diverſe; one law in ſpirits, another in bodies; one law in regions celeſtial, another in elementary; and yet the creatures are all one maſs or lump, without any *vacuum* or ſeparation? Do we not likewiſe ſee in the ſtate of the church, that amongſt people of all languages and lineages there is one communion of ſaints, and that we are all fellow-citizens and naturalized of the heavenly *Jeruſalem*; and yet nevertheleſs divers and ſeveral eccleſiaſtical laws, policies and hierarchies, according to the ſpeech of that worthy father, *in veſte varietas ſit, ſciſſura non ſit?* And therefore certainly, Maſter Speaker, the bond of law is the more ſpecial and private bond, and the bond of naturalization the more common and general; for the laws are rather *figura reipublicae* than *forma*, and rather bonds of perfection than bonds of entireneſs: and therefore we ſee in the experience of our own government, that in the kingdom of *Ireland* all our ſtatute laws, ſince *Poyning*'s law, are not of force; and yet we deny them not the benefit of naturalization. In *Guernſey* and *Jerſey* and the iſle of *Man*, our common laws are not in force, and yet they have the benefit of naturalization; neither need any man doubt but that our laws and cuſtoms muſt in ſmall time gather and win upon theirs; for here is the ſeat of the kingdom, whence come the ſupreme directions of eſtate: here is the King's perſon and example, of which the verſe ſaith, *Regis ad exemplum totus componitur orbis.* And therefore it is not poſſible, although not by ſolemn and formal act of eſtates, yet by the ſecret operation of no long time, but they will come under the yoak of our laws, and ſo *dulcis tractus pari jugo*; and this is the anſwer I give to the ſecond objection. The anſwer to the ſecond objection. *Poyning*'s law.

THE third objection is ſome inequality in the fortunes of theſe two nations, *England* and *Scotland*, by the commixture whereof there may enſue advantage to them and loſs to us. Wherein, Maſter Speaker, it is well that this difference or diſparity conſiſteth but in the external goods of fortune; for indeed it muſt be confeſſed, that for the goods of the mind and the body, they are *alteri nos*, other our-ſelves; for to do them but right, we know in their capacities and underſtandings they are a people ingenious, in labour induſtrious, in courage valiant, in body hard, active and comely. More might be ſaid, but in commending them we do but in effect commend our ſelves; for they are Inequality in the fortunes between *England* and *Scotland*.

are of one piece and continent with us; and the truth is, we are participant both of their virtues and vices. For if they have been noted to be a people not ſo tractable in government, we cannot, without flattering our ſelves, free our ſelves altogether from that fault, being a thing indeed incident to all martial people; as we ſee it evident by the example of the *Romans* and others; even like unto free horſes, that though they be of better ſervice than others, yet are they harder to guide and manage.

But for this objection, Maſter Speaker, I purpoſe to anſwer it, not by the authority of Scriptures, which ſaith, *beatius eſt dare quam accipere*, but by an authority framed and derived from the judgment of our ſelves and our anceſtors in the ſame caſe, as to this point. For, Maſter Speaker, in all the line of our Kings none uſeth to carry greater commendation than his Majeſty's noble progenitor King *Edward* the firſt of that name; and amongſt his other commendations, both of war and policy, none is more celebrated than his purpoſe and enterprize for the conqueſt of *Scotland*, as not bending his deſigns to glorious acqueſts abroad, but to ſolid ſtrength at home; which nevertheleſs if it had ſucceeded well could not but have brought in all thoſe inconveniences of the commixture of a more opulent kingdom with a leſs that are now alleged.

Laws or arms cannot alter the nature of climates.

For it is not the yoak, either of our laws or arms, that can alter the nature of the climate or the nature of the ſoil; neither is it the manner of the commixture that can alter the matter of the commixture; and therefore, Maſter Speaker, if it were good for us then, it is good for us now, and not to be priſed the leſs becauſe we payed not ſo dear for it. But a more full anſwer to this objection I refer over to that, which will come after, to be ſpoken touching ſurety and greatneſs.

The fourth objection, Maſter Speaker, is not properly an objection, but rather a pre-occupation of an objection of the other ſide; for it may be ſaid, and very materially, whereabout we do contend? The benefit of naturalization is by the law, in as many as have been, or ſhall be born ſince his Majeſty's coming to the crown, already ſettled and inveſted. There is no more then but to bring the *Ante-nati* into the degree of the *Poſt-nati*, that men grown that have well deſerved may be in no worſe caſe than children which have not deſerved, and elder brothers in no worſe caſe than younger brothers; ſo as we ſtand upon *quiddam*, not *quantum*, being but a little difference of time of one generation from another. To this, Maſter Speaker, it is ſaid by ſome, that the law is not ſo, but that the *Poſt-nati* are aliens as well as the reſt. A point that I mean not much to argue, both becauſe it hath been well ſpoken to by the gentleman that ſpoke laſt before me; and becauſe I do deſire in this caſe and in this place to ſpeak rather of conveniency than of law: only this I will ſay, that that opinion ſeems to me contrary to reaſon of law, contrary to form of pleading in law, and contrary to authority and experience of law. For reaſon of law, when I meditate of it, methinks the wiſdom of the common laws of *England* well obſerved, is admirable in the diſtribution of the benefit and protection of the laws, according to the ſeveral conditions of perſons in an excellent proportion. The degrees are four, but bipartite, two of aliens and two of ſubjects.

The firſt degree of an alien.

The firſt degree is of an alien born under a King or ſtate, that is an enemy. If ſuch an one come into this kingdom without ſafe conduct, it is at his peril; the law giveth him no protection, neither for body, lands nor goods; ſo as if he be ſlain there is no remedy by any appeal at the party's ſuit, although his wife were an *Engliſh* woman: marry at the King's ſuit, the caſe may be otherwiſe in regard of the offence to the crown.

THE ſecond degree is of an alien that is born under the faith and allegiance of a King or State that is a friend. Unto ſuch a perſon the law doth impart a greater benefit and protection, that is, concerning things perſonal, tranſitory, and immoveable, as goods and chattels, contracts and the like, but not concerning freehold and inheritance. And the reaſon is, becauſe he may be an enemy, though he is not; for the ſtate under the obeiſance of which he is, may enter into a quarrel and hoſtility; and therefore as the law hath but a tranſitory aſſurance of him, ſo it rewards him but with tranſitory benefits. The ſecond degree of an alien born under a ſtate that is a friend.

THE third degree is of a ſubject, who having been an alien, is made free by charter and denization. To ſuch an one the law doth impart yet a more ample benefit; for it gives him power to purchaſe freehold and inheritance to his own uſe, and likewiſe enables the children born after his denization to inherit. But yet nevertheleſs he cannot make title or convey pedigree from any anceſtor paramount; for the law thinks not good to make him in the ſame degree with a ſubject born, becauſe he was once an alien, and ſo might once have been an enemy: And *nemo ſubito fingitur*, mens affections cannot be ſo ſettled by any benefit, as when from their nativity they are inbred and inherent. The third degree of an alien ſubject.

AND the fourth degree, which is the perfect degree, is of ſuch a perſon as neither is enemy, nor could have been enemy in time paſt, nor can be enemy in time to come; and therefore the law gives unto him the full benefit of naturalization. The fourth degree the perfect degree.

NOW, Maſter Speaker, if theſe be the true ſteps and paces of the law, no man can deny but whoſoever is born under the King's obedience, never could *in aliquo puncto temporis* be an enemy; (a rebel he might be, but no enemy:) and therefore in reaſon of law is naturalized. Nay, contrariwiſe, he is bound *jure nativitatis* to defend this kingdom of *England* againſt all invaders or rebels; and therefore as he is obliged to the protection of arms, and that perpetually and univerſally, ſo he is to have the perpetual and univerſal benefit and protection of law, which is naturalization.

FOR form of pleading it is true that hath been ſaid, that if a man would plead another to be an alien, he muſt not only ſet forth negatively and privatively, that he was born out of the obedience of our ſovereign lord the King, but affirmatively, under the obedience of a foreign King or State in particular, which can never be done in this caſe.

As for authority, I will not preſs it; you know all what hath been publiſhed by the King's proclamation. And for experience of law we ſee it in the ſubjects of *Ireland*, in the ſubjects of *Guernſey* and *Jerſey*, parcels of the duchy of *Normandy*; in the ſubjects of *Calais*, when it was *Engliſh*, which was parcel of the crown of *France*. But, as I ſaid, I am not willing to enter into argument of law, but to hold my ſelf to point of conveniency, ſo as for my part I hold all *Poſt-nati* naturalized *ipſo jure*; but yet I am far from opinion, that it ſhould be a thing ſuperfluous to have it done by parliament. Chiefly in reſpect of that true principle of ſtate, *principum actiones præcipue ad famam ſunt componendæ*. It will lift up a ſign to all the world of our loves towards them, and good agreement with them. And theſe are, Maſter Speaker, the material objections which have been made on the other ſide, whereunto you have heard my anſwers; weigh them in your wiſdoms, and ſo I conclude that general part.

NOW, Maſter Speaker, according as I promiſed, I muſt fill the other balance in expreſſing unto you the inconveniences which we ſhall incur, if we ſhall

not proceed to this naturalization, wherein that inconvenience which above all others, and alone by itſelf, if there were none other, doth exceedingly move me, and may move you, is a poſition of eſtate, collected out of the records of time, which is this: That whereſoever ſeveral kingdoms or eſtates have been united in ſovereignty, if that union hath not been fortified and bound in with a farther union, and namely, that which is now in queſtion (of naturalization,) this hath followed, that at one time or other they have broken again, being upon all occaſions apt to relapſe and revolt to the former ſeparation.

The union between the *Romans* and the *Latins.*

OF this aſſertion the firſt example which I will ſet before you, is of that memorable union which was between the *Romans* and the *Latins*, which continued from the battle at the lake of *Regilla*, for many years unto the conſulſhips of * *C. Plautius*, and *L. Æmilius Mamercus.*

AT which time there began, about this very point of naturalization, that war which was called *Bellum Sociale*, being the moſt bloody and pernicious war that ever the *Roman* ſtate endured: wherein, after numbers of battles and infinite ſieges and ſurprizes of towns, the *Romans* in the end prevailed and maſtered the *Latins:* But as ſoon as ever they had the honour of the war, looking back into what perdition and confuſion they were near to have been brought, they preſently naturalized them all. You ſpeak of a naturalization in blood; there was a naturalization indeed in blood.

Sparta and *Peloponneſus.*

LET me ſet before you again the example of *Sparta*, and the reſt of the *Peloponneſus* their aſſociates. The ſtate of *Sparta* was a nice and jealous ſtate in this point of imparting naturalization to their confederates. But what was the iſſue of it? After they had held them in a kind of ſociety and amity for divers years, upon the firſt occaſion given, (which was no more than the ſurpriſal of the caſtle of *Thebes*, by certain deſperate conſpirators in the habit of maſkers) there enſued immediately a general revolt and defection of their aſſociates; which was the ruin of their ſtate, never afterwards to be recovered.

The union of the Kingdom of *Aragon.*

OF later times let me read your conſiderations to behold the like events in the kingdom of *Aragon*; which kingdom was united with *Caſtile* and the reſt of *Spain* in the perſons of *Ferdinando* and *Iſabella*, and ſo continued many years; but yet ſo as that it ſtood a kingdom ſever'd and divided from the reſt of the body of *Spain* in privileges, as directly in this point of naturalization, or capacity of inheritance. What came of this? Thus much, that now of freſh memory, not paſt twelve yeare ſince, only upon the voice of a condemned man out of the grate of a priſon towards the ſtreet, that cried, *Fueros Libertad, Libertad*, (which is as much as liberties or privileges) there was raiſed a dangerous rebellion, which was ſuppreſſed with great difficulty with an army royal. After which victory nevertheleſs, to ſhun farther inconvenience, their privileges were diſannulled, and they were incorporated with *Caſtile* and the reſt of *Spain.* Upon ſo ſmall a ſpark, notwithſtanding ſo long continuance, were they ready to break and ſever again.

Florence and *Piſa.*

THE like may be ſaid of the ſtates of *Florence* and *Piſa*, which city of *Piſa* being united unto *Florence*, but not endowed with the benefit of naturaliza-

Charles VIII.

tion, upon the firſt ſight of foreign aſſiſtance, by the expedition of *Charles* VIII. of *France* into *Italy*, did revolt; though it be ſince again reunited and incorporated, and did obtain the foreſaid benefit.

* 169 years after that battel. There are extant at this day coins or medals, in memory of a battel fought by this *C. Plautius* at *Privernum.* Another copy hath *of T. Manlius and P. Decius.*

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THE ſame effect we ſee in the moſt barbarous government, which ſhews it the rather to be an effect of nature; for it was thought a fit policy by the council of *Conſtantinople*, to retain the three provinces of *Tranſylvania*, *Wallachia*, and *Moldavia*, (which were as the very nurſes of *Conſtantinople*, in reſpect of their proviſions) to the end they might be the leſs waſted, only under *Waywods* as vaſſals and homagers, and not under *Baſhaws*, as provinces of the *Turkiſh* empire; which policy we ſee by late experience proved unfortunate, as appeared by the revolt of the ſame three provinces, under the arms and conduct of *Sigiſmond* prince of *Tranſylvania*; a leader very famous for a time; which revolt is not yet fully recovered. Whereas we ſeldom or never hear of revolts of provinces incorporate to the *Turkiſh* empire. The like effects in barbarous governments.

ON the other part, Mr. Speaker, becauſe it is true which the logicians ſay, *oppoſita juxta ſe poſita magis eluceſcunt*: let us take a view, and we ſhall find that whereſoever Kingdoms and States have been united, and that union incorporated by a bond of mutual naturalization, you ſhall never obſerve them afterwards upon any occaſion of trouble or otherwiſe, to break and ſever again: as we ſee moſt evidently before our eyes, in divers provinces of *France*, that is to ſay *Guienne*, *Provence*, *Normandy*, *Britain*, which notwithſtanding the infinite infeſting troubles of that Kingdom, never offered to break again. Naturalization a ſure bond.

WE ſee the like effect in all the Kingdoms of *Spain*, which are mutually naturalized, as *Leon*, *Caſtile*, *Valentia*, *Andaluſia*, *Granada*, *Murcia*, *Toledo*, *Catalonia*, and the reſt, except *Aragon*, which held the contrary courſe, and therefore had the contrary ſucceſs, (as was ſaid) and *Portugal*, of which there is not yet ſufficient trial. And laſtly, we ſee the like effect in our own nation, which never rent aſunder after it was once united; ſo as we now ſcarce know whether the heptarchy were a true ſtory or a fable; and therefore, Maſter Speaker, when I revolve with my ſelf, theſe examples and others, ſo lively expreſſing the neceſſity of a naturalization to avoid a relapſe into a ſeparation; and do hear ſo many arguments and ſcruples made on the other ſide; it makes me think on the old biſhop, which upon a publick diſputation of certain Chriſtian divines with ſome learned men of the heathen, did extremely preſs to be heard; and they were loth to ſuffer him, becauſe they knew he was unlearned, though otherwiſe an holy and well-meaning man: but at laſt, with much ado, he got to be heard; and when he came to ſpeak, inſtead of uſing argument, he did only ſay over his belief: but did it with ſuch aſſurance and conſtancy, that it did ſtrike the minds of thoſe that heard him, more than any argument had done. And ſo, Maſter Speaker, againſt all theſe witty and ſubtle arguments, I ſay that I do believe, and I would be ſorry to be found a prophet in it, that except we proceed with this naturalization, though perhaps not in his Majeſty's time, who hath ſuch intereſt in both nations, yet in the time of his deſcendents theſe realms will be in continual danger to divide and break again. Now if any man be of that careleſs mind, *mancat noſtros ea cura nepotes*; or of that hard mind, to leave things to be tried by the ſharpeſt ſword: ſure I am, he is not of St. *Paul*'s opinion, who affirmeth, that whoſoever uſeth not fore-ſight and proviſion for his family, is worſe than an unbeliever; much more, if we ſhall not uſe fore-ſight for theſe two kingdoms, that comprehend in them ſo many families, but leave things open to the peril of future diviſions. And thus have I expreſſed unto you the inconvenience which of all others ſinketh deepeſt with me as the moſt weighty: neither do there want other inconveniences, Mr. Speaker, the effects and influence whereof, I fear, will not be adjourned to ſo long a day as this that I have ſpoken of: for I leave it to *England* never ſever'd after once united.

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your wiſdom to conſider whether you do not think, in caſe by the denial of this naturalization, any pique, alienation, or unkindneſs, I do not ſay ſhould be, but ſhould be thought to be, or noiſed to be between theſe two nations, whether it will not quicken and excite all the envious and malicious humours, whereſoever (which are now covered) againſt us, either foreign or at home; and ſo open the way to practices and other engines and machinations, to the diſturbance of this ſtate? As for that other inconvenience of his Majeſty's engagement to this action, it is too binding, and too preſſing to be ſpoken of, and may do better a great deal in your minds than in my mouth, or in the mouth of any man elſe; becauſe, as I ſay, it doth preſs our liberty too far: and therefore, Maſter Speaker, I come now to the third general part of my diviſion, concerning the benefits which we ſhall purchaſe by knitting this knot ſurer and ſtraiter between theſe two kingdoms, by the communicating of naturalization: the benefits may appear to be two, the one ſurety, the other greatneſs.

A binding inconvenience.

The benefit of ſurety.

TOUCHING ſurety, Mr. Speaker, it was well ſaid by *Titus Quintius* the *Roman*, touching the ſtate of *Peloponneſus*, that the tortoiſe is ſafe within her ſhell, *teſtudo intra tegumen tuta eſt*; but if there be any parts that lie open, they endanger all the reſt. We know well, that although the ſtate at this time be in a happy peace, yet for the time paſt, the more ancient enemy to this kingdom hath been the *French*, and the more late the *Spaniard*; and both theſe had as it were their ſeveral poſtern gates, whereby they might have approach and entrance to annoy us. *France* had *Scotland*, and *Spain* had *Ireland*; for theſe were the two acceſſes which did comfort and encourage both theſe enemies to aſſail and trouble us. We ſee that of *Scotland* is cut off by the union of theſe two kingdoms, if that it ſhall be now made conſtant and permanent; that of *Ireland* is cut off likewiſe by the convenient ſituation of the weſt of *Scotland* towards the north of *Ireland*, where the ſore was: which we ſee being ſuddenly cloſed hath continued cloſed by means of this ſalve; ſo that as now there are no parts of this ſtate expoſed to danger to be a temptation to the ambition of foreigners, but their approaches and avenues are taken away: for I do little doubt but thoſe foreigners which had ſuch little ſucceſs when they had thoſe advantages, will have much leſs comfort now that they be taken from them; and ſo much for ſurety.

The benefit of greatneſs.

FOR greatneſs, Mr. Speaker, I think a man may ſpeak it ſoberly and without bravery, that this kingdom of *England*, having *Scotland* united, *Ireland* reduced, the ſea-provinces of the Low Countries contracted, and ſhipping maintained, is one of the greateſt monarchies, in forces truely eſteemed, that hath been in the world. For certainly the kingdoms here on earth have a reſemblance with the kingdom of heaven, which our Saviour compareth not to any great kernel or nut, but to a very ſmall grain, yet ſuch an one as is apt to grow and ſpread; and ſuch do I take to be the conſtitution of this kingdom; if indeed we ſhall refer our counſels to greatneſs and power, and not quench them too much with the conſideration of utility and wealth. For, Mr. Speaker, was it not, think you, a true anſwer that *Solon* of *Greece* made to the rich King *Cræſus* of *Lydia* when he ſhewed unto him a great quantity of gold that he had gathered together, in oſtentation of his greatneſs and might? But *Solon* ſaid to him, contrary to his expectation, Why, Sir, if another come that hath better iron than you, he will be lord of all your gold. Neither is the authority of *Machiavel* to be deſpiſed, who ſcorned that proverb of ſtate, taken firſt from a ſpeech of *Mucianus*, that moneys are the ſinews of war; and ſaith, there are no true ſinews of war, but the very ſinews of the arms of valiant men.

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NAY more, Mr. Speaker, whoſoever ſhall look into the ſeminaries and beginnings of the monarchies of the world, he ſhall find them founded in poverty. The beginning of monarchies founded in poverty.

PERSIA a country barren and poor, in reſpect of *Media*, which they ſubdued.

MACEDON, a kingdom ignoble and mercenary until the time of *Philip* the ſon of *Amyntas*. *Macedon.*

ROME had poor and paſtoral beginnings. *Rome.*

THE *Turks*, a band of *Sarmathian Scythes*, that in a vagabond manner made incurſion upon that part of *Aſia*, which is yet called *Turcomania*; out of which, after much variety of fortune, ſprung the *Ottoman* family, now the terrour of the world. The *Turks.*

So we know the *Goths*, *Vandals*, *Alans*, *Huns*, *Lombards*, *Normans*, and the reſt of the northern people, in one age of the world made their deſcent or expedition upon the *Roman* empire, and came not as rovers to carry away prey and be gone again; but planted themſelves in a number of rich and fruitful provinces, where not only their generations, but their names remain to this day; witneſs *Lombardy*, *Catalonia*, (a name compounded of *Goth* and *Aland*) *Andaluſia*, (a name corrupted from *Vandalitia*) *Hungaria*, *Normandy*, and others.

NAY the fortune of the *Swiſſes* of late years, which are bred in a barren and mountainous country, is not to be forgotten; who firſt ruined the duke of *Burgundy*, the ſame who had almoſt ruined the kingdom of *France*, what time after the battel near *Granſon* the rich jewel of *Burgundy* prized at many thouſands was ſold for a few pence by a common *Swiſs*, that knew no more what a jewel meant than did *Æſop*'s cock. And again, the ſame nation in revenge of a ſcorn was the ruin of the *French* King's affairs in *Italy*, *Lewis* XII. For that King, when he was preſſed ſomewhat rudely by an agent of the *Switzers* to raiſe their penſions, brake into words of choler: What, ſaith he, will theſe villains of the mountains put a tax upon me? Which words loſt him his duchy of *Milan*, and chaſed him out of *Italy*. The *Switzers.*

ALL which examples, Mr. Speaker, do well prove *Solon*'s opinion of the authority and maſtery that iron hath over gold. And therefore if I ſhall ſpeak unto you mine own heart, methinks we ſhould a little diſdain that the nation of *Spain*, which howſoever of late it hath grown to rule, yet of ancient time ſerved many ages, firſt under *Carthage*, then under *Rome*, after under *Saracens*, *Goths*, and others, ſhould of late years take unto them that ſpirit as to dream of a monarchy in the weſt, according to that device, *video ſolem orientem in occidente*, only becauſe they have raviſh'd from ſome wild and unarmed people mines and ſtore of gold; and on the other ſide, that this iſland of *Britain*, ſeated and manned as it is, and that hath, I make no queſtion, the beſt iron in the world, that is, the beſt ſoldiers in the world, ſhall think of nothing but accounts and audits, and *meum & tuum*, and I cannot tell what.

Mr. Speaker, I have, I take it, gone through the parts which I propounded to my ſelf, wherein if any man ſhall think that I have ſung a *placebo*, for mine own particular, I would have him know that I am not ſo unſeen in the world, but that I diſcern it were much alike for my private fortune to reſt a *tacebo*, as to ſing a *placebo* in this buſineſs: But I have ſpoken out of the fountain of my heart, *Credidi propter quod locutus ſum:* I believed, therefore I ſpake, ſo as my duty is performed: the judgment is yours; God direct it for the beſt.

A

SPEECH

USED BY

Sir *FRANCIS BACON*, Kt.

In the Lower Houſe of Parliament, by occaſion of a motion concerning the UNION of LAWS.

AND it pleaſe you, Maſter Speaker, were it now a time to wiſh, as it is to adviſe, no man ſhould be more forward or more earneſt than my ſelf in this wiſh, that his Majeſty's ſubjects of *England* and *Scotland* were governed by one law; and that for many reaſons.

FIRST, Becauſe it will be an infallible aſſurance that there will never be any relapſe in ſucceeding ages to a ſeparation.

SECONDLY, *Dulcis tractus pari jugo.* If the draught lie moſt upon us, and the yoak lie leaſt on them, it is not equal.

THIRDLY, The qualities and (as I may term it) the elements of their laws and ours are ſuch as do promiſe an excellent temperature in the compounded body: for if the prerogative here be too indefinite, it may be the liberty there is too unbounded; if our laws and proceedings be too prolix and formal, it may be theirs are too informal and ſummary.

FOURTHLY, I do diſcern to my underſtanding, there will be no great difficulty in this work; for their laws, by that I can learn, compared with ours, are like their language compared with ours: for as their language hath the ſame roots that ours hath, but hath a little more mixture of *Latin* and *French*; ſo their laws and cuſtoms have the like grounds that ours have, with a little more mixture of the civil law and *French* cuſtoms.

LASTLY, The mean to this work ſeemeth to me no leſs excellent than the work itſelf: for if both laws ſhall be united, it is of neceſſity for preparation and inducement thereunto, that our own laws be reviewed and re-compiled, than the which I think there cannot be a work that his Majeſty can undertake in theſe his times of peace more politic, more honourable, nor more beneficial to his ſubjects for all ages:

Pace data in terris, animum ad civilia vertit
Jura ſuum, legeſque tulit juſtiſſimus author.

FOR this continual heaping up of laws without digeſting them, maketh but a *chaos* and confuſion, and turneth the laws many times to become but ſnares to the people, as was well ſaid, *Pluet ſuper eos laqueos: non ſunt autem pejores laquei, quam laquei legum.* And therefore this work I eſteem to be indeed a work (rightly to term it) heroical. So that for this good wiſh of union of laws I do conſent to the full: and I think you may perceive by that which I have ſaid, that I came not in this to the opinion of others, but that I was long ago ſettled in it my ſelf: nevertheleſs as this is moved out of zeal, ſo I take it to be moved out of time, as commonly all zealous motions are, while men

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are ſo faſt carried on to the end, as they give no attention to the means: for if it be time to talk of this now, it is either becauſe the buſineſs now in hand cannot proceed without it, or becauſe in time and order this matter ſhould be precedent, or becauſe we ſhall loſe ſome advantage towards this effect ſo much deſired, if we ſhould go on in the courſe we are about. But none of theſe three in my judgment are true; and therefore the motion (as I ſaid) unſeaſonable.

For firſt, that there may not be a naturalization without an union in laws cannot be maintained. Look into the example of the church, and the union thereof. You ſhall ſee general churches, that join in one faith, one baptiſm, which are the points of ſpiritual naturalization, do many times in policy, conſtitutions, and cuſtoms differ: and therefore one of the fathers made an excellent obſervation upon the two myſteries; the one, that in the goſpel the garment of Chriſt is ſaid to have been without ſeam; the other, that in the pſalm the garment of the Queen is ſaid to have been of divers colours; and concludeth, *in veſte varietas ſit, ſciſſura non ſit.* And ſo in this caſe, Maſter Speaker, we are now in hand to make this monarchy of one piece, and not of one colour. Look again into the examples of foreign countries, and take that next us of *France*, and there you ſhall find that they have this diſtribution, *Pais du droit eſcrit*, and *pais du droit couſtumier*. For *Gaſcoigne*, *Languedoc*, *Provence*, *Dauphiny*, are countries governed by the letter, or text of the civil law: But the iſle of *France*, *Tourain*, *Berry*, *Anjou*, and the reſt, and moſt of all *Britain* and *Normandy* are governed by cuſtoms, which amount to a municipal law, and uſe the civil law but only for grounds, and to decide new and rare caſes; and yet nevertheleſs naturalization paſſeth through all.

Secondly, That this union of laws ſhould precede the naturalization, or that it ſhould go on *pari paſſu*, hand in hand, I ſuppoſe likewiſe can hardly be maintained: but the contrary, that naturalization ought to precede, and that not in the precedence of an inſtant; but in diſtance of time: of which my opinion, as I could yield many reaſons; ſo becauſe all this is but a digreſſion, and therefore ought to be ſhort; I will hold my ſelf now only to one, which is briefly and plainly this; that the union of laws will aſk a great time to be perfected, both for the compiling and for the paſſing of them. During all which time, if this mark of ſtrangers ſhould be denied to be taken away, I fear it may induce ſuch a habit of ſtrangeneſs, as will rather be an impediment than a preparation to farther proceeding: for he was a wiſe man that ſaid, *opportuni magnis conatibus tranſitus rerum*, and in theſe caſes, *non progredi, eſt regredi*. And like as in a pair of tables, you muſt put out the former writing before you can put in new; and again, that which you write in, you write letter by letter; but that which you put out, you put out at once: ſo we have now to deal with the tables of men's hearts, wherein it is in vain to think you can enter the willing acceptance of our laws and cuſtoms, except you firſt put forth all notes either of hoſtility or foreign condition: and theſe are to be put out *ſimul & ſemel*, at once without gradations; whereas the other points are to be imprinted and engraven diſtinctly and by degrees.

Thirdly, Whereas it is conceived by ſome, that the communication of our benefits and privileges is a good hold that we have over them to draw them to ſubmit themſelves to our laws, it is an argument of ſome probability, but yet to be anſwered many ways. For firſt, the intent is miſtaken, which is not, as I conceive it, to draw them wholly to a ſubjection to our laws, but to draw both nations to one uniformity of law. Again, to think that there

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ſhould be a kind of articulate and indented contract, that they ſhould receive our laws to obtain our privileges, it is a matter in reaſon of eſtate not to be expected, being that which ſcarcely a private man will acknowledge, if it come to that whereof *Seneca* ſpeaketh, *Beneficium accipere eſt libertatem vendere.* No, but courſes of eſtate do deſcribe and delineate another way, which is to win them either by benefit or by cuſtom: for we ſee in all creatures that men do feed them firſt, and reclaim them after. And ſo in the firſt inſtitution of kingdoms, Kings did firſt win people by many benefits and protections, before they preſt any yoak. And for cuſtom, which the poet calls, *imponere morem*; who doubts but that the ſeat of the kingdom, and the example of the King reſting here with us, that our manners will quickly be theirs to make all things ready for our laws? And laſtly, the naturalization which is now propounded, is qualified with ſuch reſtrictions as there will be enough kept back to be uſed at all times for an adamant of drawing them farther on towards our deſires. And therefore to conclude, I hold this motion of union of laws very worthy, and ariſing from very good minds; but yet not proper for this time.

To come therefore to that, which is now in queſtion, it is no more but whether there ſhould be a difference made between the *Ante-nati* and the *Poſt-nati* in point of law, but only in point of convenience; as if a law were now newly to be framed. In which queſtion I will at this time anſwer two objections, and uſe two arguments, and ſo leave it to your judgment.

The firſt objection hath been, that if a difference ſhould be, it ought to be in favour of the *Ante-nati*, becauſe they are perſons of merit, ſervice, and proof; whereas the *Poſt-nati* are infants, that (as the ſcripture ſaith) know not the right hand from the left.

This were good reaſon, Maſter Speaker, if the queſtion were of naturalizing ſome particular perſons by a private bill; but it hath no proportion with the general caſe: for now we are not to look to reſpects, that are proper to ſome; but to thoſe, which are common to all. Now then how can it be imagined, but that thoſe, which took their firſt breath ſince this happy union, inherent in his Majeſty's perſon, muſt be more aſſured and affectionate to this kingdom, than thoſe generally can be preſumed to be, which were ſometimes ſtrangers; for *Nemo ſubito fingitur:* the converſions of minds are not ſo ſwift as the converſions of times. Nay in effects of grace, which exceed far the effects of nature, we ſee St. *Paul* makes a difference between thoſe he calls *Neophytes*, that is, newly grafted into Chriſtianity, and thoſe that are brought up in the faith. And ſo we ſee by the laws of the church, that the children of chriſtians ſhall be baptized in regard of the faith of their parents: but the child of an ethnic may not have baptiſm till he be able to make an underſtanding profeſſion of his faith.

Another objection hath been made, that we ought to be more provident and reſerved to reſtrain the *Poſt-nati* than the *Ante-nati*; becauſe during his Majeſty's time, being a prince of ſo approved wiſdom and judgment, we need no better caution than the confidence we may repoſe in him; but in the future reigns of ſucceeding ages, our caution muſt be *in re*, and not *in perſona.*

But, Mr. Speaker, in this I anſwer, that as we cannot expect a prince hereafter leſs like to err in reſpect of his judgment; ſo again, we cannot expect a prince ſo like to exceed, if I may ſo term it, in this point of beneficence to that nation, in reſpect of the occaſion. For whereas all princes and all men are won either by merit or conſideration, there is no appearance, that any of his Majeſty's deſcendants can have either of theſe cauſes of bounty towards

wards that nation in ſo ample a degree as his Majeſty hath. And theſe be the two obſervations, which ſeem to me moſt material, why the *Poſt-nati* ſhould be concluded in the ſame reſtrictions or greater than the *Ante-nati*, whereunto you have heard the anſwers.

The two reaſons, which I will uſe on the other ſide, are briefly theſe; the one, being a reaſon of common ſenſe; the other, a reaſon of eſtate.

We ſee, Mr. Speaker, the time of the nativity is in moſt caſes principally regarded. In nature, the time of planting and ſetting is chiefly obſerved; and we ſee the aſtrologers pretend to judge of the fortune of the party by the time of the nativity. In laws, we may not unfitly apply the caſe of legitimation to the caſe of naturalization; for it is true, that the common-law doth put the *Ante-natus* and the *Poſt-natus* in one degree. But when it was moved to the parliament of *England*, *Barones una voce reſpondernnt*, *Nolumus leges Angliae mutare*. And though it muſt be confeſſed, that the *Ante-nati* and *Poſt-nati* are in the ſame degree in dignities; yet were they never ſo in abilities: for no man doubts, but the ſon of an earl or baron, before his creation or call, ſhall inherit the dignity, as well as the ſon born after. But the ſon of an attainted perſon, born before the attainder, ſhall not inherit, as the after born ſhall, notwithſtanding charter of pardon.

The reaſon of ſtate is, that any reſtriction of the *Ante-nati* is temporary, and expireth with the generation; but if you make the *Poſt-nati* in all one degree, you do but in ſubſtance pen a perpetuity of ſeparation.

Mr. Speaker, in this point I have been ſhort, becauſe I little expected this doubt, as to point of convenience; and therefore will not much labour, where I ſuppoſe there is no greater oppoſition.

A

REPORT

MADE BY

Sir *FRANCIS BACON*, Kt.

In the HOUSE of COMMONS,

Of a SPEECH delivered by the Earl of *Salisbury*; and another SPEECH delivered by the Earl of *Northampton*, at a conference concerning the Petition of the Merchants upon the *Spaniſh* grievances, Parliament 5 *Jacobi*.

AND may it pleaſe you, (Mr. Speaker,) I do not find my ſelf any ways bound to report that which paſſed at the laſt conference touching the *Spaniſh* grievances, having been neither employed to ſpeak, nor appointed to report in that cauſe. But becauſe it is put upon me by a ſilent expectation, grounded upon nothing (that I know) more than that I was obſerved diligently to take notes: I am content (if that proviſion which I made for mine own remembrance may ſerve this houſe for a report) not to deny you that ſheaf that I have in haſte bound up. It is true, that one of his Majeſty's principal counſellors in cauſes of eſtate, did uſe a ſpeech that contained a world of matter; but now I ſhall be able to make a globe of that world, therein I fear mine own ſtrength.

HIS lordſhip took the occaſion of this, which I ſhall now report, upon the anſwer which was by us made, to the amendments propounded upon the bill of hoſtile laws; quitting that buſineſs with theſe few words; that he would diſcharge our expectation of reply, becauſe their lordſhips had no warrant to diſpute. Then continuing his ſpeech, he fell into this other cauſe, and ſaid; that being now to make anſwer to a propoſition of ours, as we had done to one of theirs, he wiſhed it could be paſſed over with like brevity. But he did foreſee his way, that it would prove not only long, but likewiſe hard to find, and hard to keep; this cauſe being ſo to be carried, as above all no wrong be done to the King's ſovereignty and authority: and in the ſecond place, no miſunderſtanding do enſue between the two houſes. And therefore that he hoped his words ſhould receive a benign interpretation; knowing well that purſuit and drift of ſpeech, and multitude of matter, might breed words to paſs from him beyond the compaſs of his intention: and therefore he placed more aſſurance and caution in the innocency of his own meaning, and in the experience of our favours, than in any his warineſs or watchfulneſs over his own ſpeech.

THIS reſpective preface uſed, his lordſhip deſcended to the matter it ſelf; which he divided into three conſiderations: for he ſaid he would conſider of the petition,

FIRST,

First, As it proceeded from the merchants.

Secondly, As from them it was offered to the lower houſe.

And thirdly, As from the lower houſe it was recommended to the higher houſe.

In the firſt of theſe conſiderations there fell out naturally a ſubdiviſion into the perſons of the petitioners, and the matter and parts of the petition. In the perſons of the merchants his lordſhip made (as I have collected them) in number eight obſervations, whereof the three firſt reſpected the general condition of merchants; and the five following were applied to the particular circumſtances of the merchants now complaining.

His lordſhip's firſt general obſervation was, that merchants were of two ſorts; the one ſought their fortunes (as the verſe ſaith) *per ſaxa, per ignes*; and, as it is ſaid in the ſame place, *extremos currit mercator ad Indos*; ſubjecting themſelves to weather and tempeſt; to abſence, and, as it were, exile, out of their native countries; to arreſts in entrances of war; to foreign injuſtice and rigor in times of peace; and many other ſufferances and adventures. But that there were others that took a more ſafe, but a leſs generous courſe in raiſing their fortunes. He taxed none, but did attribute much more reſpect to the former.

The ſecond general obſervation which his lordſhip made was, that the complaints of merchants were uſually ſubject to much error, in regard that they ſpake (for the moſt part) but upon information; and that carried through many hands; and of matters done in remote parts; ſo as a falſe or factious factor might oftentimes make great tragedies upon no great ground. Whereof, towards the end of his ſpeech, he brought an inſtance of one trading into the *Levant*; that complained of an arreſt of his ſhip, and poſſeſſed the council-table with the ſame complaint in a vehement and bitter faſhion; deſiring and preſſing ſome preſent and expoſtulatory letters touching the ſame. Whereupon ſome counſellors well acquainted with the like heats, and forwardneſs in complaints, happened to ſay to him out of conjecture, and not out of any intelligence, what will you ſay if your ſhip which you complain to be under arreſt, be now under ſail in way homewards? Which fell out accordingly; the ſame perſon confeſſing, ſix days after, to the lords, that ſhe was indeed in her way homewards.

The third general obſervation which his lordſhip made was this, in effect; that although he granted that the wealth and welfare of the merchant was not without a ſympathy with the general ſtock and ſtate of a nation, eſpecially an iſland; yet nevertheleſs, it was a thing too familiar with the merchant, to make the caſe of his particular profit, the publick caſe of the kingdom.

There follow the particular obſervations, which have a reference and application to the merchants that trade to *Spain* and the *Levant*; wherein his lordſhip did firſt honourably and tenderly acknowledge, that their grievances were great, that they did multiply, and that they do deſerve compaſſion and help; but yet nevertheleſs, that he muſt uſe that loving plainneſs to them as to tell them, that in many things they were authors of their own miſeries. For ſince the diſſolving of the company, which was termed the monopoly, and was ſet free by the ſpecial inſtance of this houſe, there hath followed ſuch a confuſion and relaxation in order and government amongſt them, as they do not only incur many inconveniences, and commit many errors; but in the purſuits of their own remedies and ſuits they do it ſo impolitickly, and after ſuch a faſhion, as except lieger embaſſadors (which are the eyes of Kings

in

in foreign parts,) ſhould leave their centinel, and become merchants factors and ſollicitors, their cauſes can hardly proſper. And which is more, ſuch is now the confuſion in the trade, as ſhop-keepers and handycraft-men become merchants there; who being bound to no orders, ſeek baſe means, by gifts and bribery, to procure favours at the hands of officers there. So as the honeſt merchant that trades like a ſubſtantial merchant, and loves not to take ſervile courſes to buy the right, due to him by the amity of the princes, can have no juſtice without treading in their ſteps.

Secondly, His lordſhip did obſerve ſome improbability that the wrongs ſhould be ſo great, conſidering trading into thoſe parts was never greater; whereas if the wrongs and griefs were ſo intolerable and continual as they propound them and voiced them, it would work rather a general diſcouragement and coldneſs of trade in fact, than an earneſt and hot complaint in words.

Thirdly, His lordſhip did obſerve, that it is a courſe (howſoever, it may be with a good intent, yet) of no ſmall preſumption, for merchants upon their particular grievances to urge things tending to a direct war, conſidering that nothing is more uſual in treaties, than that ſuch particular damages and moleſtations of ſubjects are left to a form of juſtice to be righted: and that the more high articles do retain nevertheleſs their vigour inviolably; and that the great bargain of the kingdom for war and peace, may in no wiſe depend upon ſuch petty forfeitures, no more than in common aſſurance between man and man, it were fit that, upon every breach of covenants, there ſhould be limited a re-entry.

Fourthly, His lordſhip did obſerve, in the manner of preferring their petition, they had inverted due order, addreſſing themſelves to the foot, and not to the head. For conſidering that they prayed no new law for their relief, and that it concerned matter of inducement to war or peace, they ought to have begun with his Majeſty, unto whoſe royal judgment, power, and office did properly belong the diſcerning of that which was deſired, the putting in act of that which might be granted, and the thanks for that which might be obtained.

Fifthly, His lordſhip did obſerve, that as they had not preferred their petition as it ſhould be, ſo they had not purſued their own direction as it was. For having directed their petition to the King, the lords ſpiritual and temporal, and the commons in parliament aſſembled, it imported, as if they had offered the like petition to the lords, which they never did; contrary not only to their own direction, but likewiſe to our conceit, who pre-ſuppoſed (as it ſhould ſeem by ſome ſpeech that paſſed from us at a former conference,) that they had offered ſeveral petitions of like tenor to both houſes. So have you now thoſe eight obſervations, part general, part ſpecial, which his lordſhip made touching the perſons of thoſe which exhibited the petition, and the circumſtances of the ſame.

For the matter of the petition it ſelf, his lordſhip made this diviſion, that it conſiſteth of three parts.

First, Of the complaints of wrongs in fact.

Secondly, Of the complaints of wrongs in law, as they may be truly termed, that is, of the inequality of laws which do regulate the trade.

And thirdly, The remedy deſired by letters of mart.

The wrongs in fact receive a local diſtribution of three. In the trade to *Spain*, in the trade to the *Weſt-Indies*, and in the trade to the *Levant*.

Concerning the trade to *Spain*; although his lordſhip did uſe much ſignification of compaſſion of the injuries which the merchants received; and attributed

attributed ſo much to their profeſſion and eſtate, as from ſuch a mouth in ſuch a preſence, they ought to receive, for a great deal of honour and comfort, (which kind of demonſtration he did interlace throughout his whole ſpeech, as proceeding *ex abundantia cordis*;) yet nevertheleſs he did remember four excuſations, or rather extenuations of thoſe wrongs.

The firſt was, that the injuſtices complained of were not in the higheſt degree, becauſe they were delays and hard proceedings, and not inique ſentences, or definitive condemnations: wherein I called to mind what I heard a great biſhop ſay, that courts of juſtice, though they did not turn juſtice into wormwood by corruption, yet they turned it into vinegar by delays, which ſoured it. Such a difference did his lordſhip make, which, no queſtion, is a difference, *ſecundum majus & minus.*

Secondly, His lordſhip aſcribed theſe delays, not ſo much to malice or alienation of mind towards us, as to the nature of the people and nation; which is proud and therefore dilatory: for all proud men are full of delays, and muſt be waited on; and eſpecially to the multitudes and diverſities of tribunals and places of juſtice, and the number of the King's councils full of referrings, which ever prove of neceſſity to be deferrings; beſides the great diſtance of territories: all which have made the delays of *Spain* to come into a by-word through the world. Wherein I think his lordſhip might allude to the proverb of *Italy; mi venga la morte di Spagna:* let my death come from *Spain*, for then it is ſure to be long a coming.

Thirdly, His lordſhip did uſe an extenuation of theſe wrongs, drawn from the nature of man, (*nemo ſubito fingitur.*) For that we muſt make an account, that though the fire of enmity be out between *Spain* and us, yet it vapoureth: the utter extincting whereof muſt be the work of time.

But laſtly, His lordſhip did fall upon that extenuation, which of all the reſt was moſt forcible; which was, that many of theſe wrongs were not ſuſtained without ſome aſperſion of the merchants own fault in miniſtring the occaſion; which grew chiefly in this manner.

There is contained an article in the treaty between *Spain* and us, that we ſhall not tranſport any native commodities of the *Low-Countries* into *Spain*; nay more, that we ſhall not tranſport any *opificia*, manufactures of the ſame countries: ſo that if an *Engliſh* cloth take but a dye in the *Low-Countries*, it may not be tranſported by the *Engliſh*. And the reaſon is, becauſe even thoſe manufactures, although the materials come from other places, do yield unto them a profit and ſuſtentation in regard their people are ſet on work by them; they have a gain likewiſe in the price; and they have a cuſtom in the tranſporting. All which the policy of *Spain* is to debar them of; being no leſs deſirous to ſuffocate the trade of the *Low-Countries* than to reduce their obedience. This article the *Engliſh* merchant either doth not or will not underſtand: but being drawn with his three-fold cord of love, hate, and gain, they do venture to tranſport the *Low-Country* commodities of theſe natures, and ſo draw upon themſelves theſe arreſts and troubles.

For the trade to the *Indies*, his lordſhip did diſcover unto us the ſtate of it to be thus: The policy of *Spain* doth keep that treaſury of theirs under ſuch lock and key, as both confederates, yea, and ſubjects, are excluded of trade into thoſe countries; inſomuch as the *French* King, who hath reaſon to ſtand upon equal terms with *Spain*, yet nevertheleſs is by expreſs capitulation debarred. The ſubjects of *Portugal*, whom the ſtate of *Spain* hath ſtudied by all means to content, are likewiſe debarred: ſuch a vigilant dragon is there that keepeth this golden fleece; yet nevertheleſs, ſuch was his Majeſty's

magnanimity in the debate and concluſion of the laſt treaty, as he would never condeſcend to any article, importing the excluſion of his ſubjects from that trade; as a prince that would not acknowledge that any ſuch right could grow to the crown of *Spain* by the donative of the pope, whoſe authority he diſclaimeth; or by the title of a diſperſed and punctual occupation of certain territories in the name of the reſt, but ſtood firm to reſerve that point in full queſtion to farther times and occaſions; ſo as it is left by the treaty in ſuſpence, neither debarred nor permitted: The tenderneſs and point of honour whereof was ſuch, as they that went thither muſt run their own peril. Nay farther, his lordſhip affirmed, that if yet at this time his Majeſty would deſcend to a courſe of entreaty for the releaſe of the arreſts in thoſe parts, and ſo confeſs an excluſion, and quit the point of honour, his Majeſty might have them forthwith releaſed. And yet his lordſhip added, that the offences and ſcandals of ſome had made this point worſe than it was, in regard that this very laſt voyage to *Virginia*, intended for trade and plantation, where the *Spaniard* hath no people nor poſſeſſion, is already become infamed for piracy. Witneſs *Bingley*, who firſt inſinuating his purpoſe to be an actor in that worthy action of enlarging trade and plantation, is become a pirate, and hath been ſo purſued, as his ſhip is taken in *Ireland*, though his perſon is not yet in hold.

For the trade to the *Levant*, his lordſhip opened unto us that the complaint conſiſted in effect but of two particulars: the one, touching the arreſt of a ſhip called the *Trial* in *Sicily*; the other, of a ſhip called the *Vineyard* in *Sardinia*. The firſt of which arreſts, was upon pretence of piracy: the ſecond, upon pretence of carrying ordnance and powder to the *Turk*. That proceſs concerning the trial hath been at the merchants inſtance drawn to a review in *Spain*, which is a favour of exceeding rare precedent, being directly againſt the liberties and privileges of *Sicily*. That of the *Vineyard*, notwithſtanding it be of that nature, as (if it ſhould be true) tendeth to the great diſhonour of our nation; (whereof hold hath been already taken by the *French* ambaſſador reſiding at *Conſtantinople*, who entred into a ſcandalous expoſtulation with his Majeſty's ambaſſador there, upon that and the like tranſportations of ammunition to the *Turk*;) yet nevertheleſs there is an anſwer given, by letters from the King's ambaſſador *Liegier* in *Spain*, that there ſhall be ſome courſe taken to give reaſonable contentment in that cauſe, as far as may be: in both which ſhips (to ſpeak truly) the greateſt maſs of loſs may be included; for the reſt are mean, in reſpect of the value of thoſe two veſſels. And thus much his lordſhip's ſpeech comprehended concerning the wrongs in fact.

Concerning the wrongs in law; that is to ſay, the rigour of the *Spaniſh* laws extended upon his Majeſty's ſubjects that traffick thither, his lordſhip gave this anſwer. That they were no new ſtatutes or edicts deviſed for our people, or our times; but were the ancient laws of that kingdom: *Suus cuique mos*. And therefore, as travellers muſt endure the extremities of the climate, and temper of the air where they travel; ſo merchants muſt bear with the extremities of the laws, and temper of the eſtate where they trade. Whereunto his lordſhip added, that our own laws here in *England* were not exempted from the like complaints in foreign parts; eſpecially in point of marine cauſes and depredations, and that ſame ſwift alteration of property, which is claimed by the admiralty in caſe of goods taken in pirates hands. But yet that we were to underſtand thus much of the King of *Spain*'s care and regard of our nation; that he had written his letters to all corregidors, officers of ports, and other his miniſters, declaring his will and pleaſure to have his Majeſty's

ſubjects

ſubjects uſed with all freedom and favour; and with this addition, that they ſhould have more favour when it might be ſhewed than any other. Which words, howſoever the effects prove, are not ſuddenly to be requited with peremptory reſolutions till time declare the direct iſſue.

For the third part of the matter of the petition, which was the remedy ſought by letters of mart, his lordſhip ſeemed deſirous to make us capable of the inconvenience of that which was deſired, by ſetting before us two notable exceptions thereunto: the one, that the remedy was utterly incompetent and vain; the other, that it was dangerous and pernicious to our merchants, and in conſequence to the whole ſtate.

For the weakneſs of the remedy, his lordſhip wiſhed us to enter into conſideration what the remedy was, which the ſtatute of *Henry* the fifth, (which was now ſought to be put in execution) gave in this caſe: which was thus; That the party grieved ſhould firſt complain to the keeper of the privy ſeal, and from him ſhould take letters unto the party that had committed the ſpoil for reſtitution; and in default of reſtitution to be made upon ſuch letters ſerved, then to obtain of the chancellor letters of mart or repriſal: which circuit of remedy promiſed nothing but endleſs and fruitleſs delay, in regard that the firſt degree preſcribed was never likely to be effected; it being ſo wild a chace, as to ſerve proceſs upon the wrong doer in foreign parts. Wherefore his lordſhip ſaid, that it muſt be the remedy of ſtate that muſt do good in this caſe; which uſeth to proceed by certificates, atteſtations, and other means of information; not depending upon a privy ſeal to be ſerved upon the party, whom haply they muſt ſeek out in the *Weſt Indies*.

For the danger of the remedy, his lordſhip directed our conſiderations to take notice of the proportions of the merchants goods in either kingdom: as that the ſtock of goods of the *Spaniard*, which is within his Majeſty's power and diſtreſs, is a trifle; whereas the ſtock of *Engliſh* goods in *Spain* is a maſs of mighty value. So as if this courſe of letters of mart ſhould be taken to ſatisfy a few hot purſuitors here, all the goods of the *Engliſh* ſubjects in *Spain* ſhall be expoſed to ſeizure and arreſt; and we have little or nothing in our hands on this ſide to mend our ſelves upon. And thus much, Mr. Speaker, is that which I have collected out of that excellent ſpeech, concerning the firſt main part, which was the conſideration of the petition as it proceeded from the merchant.

There followeth now the ſecond part, conſidering the petition as it was offered in this houſe. Wherein his lordſhip, after an affectionate commemoration of the gravity, capacity, and duty, which he generally found in the proceedings of this houſe, deſired us nevertheleſs to conſider with him, how it was poſſible that the entertaining of petitions concerning private injuries, and of this nature, could avoid theſe three inconveniences: the firſt, of injuſtice; the ſecond, of derogation from his Majeſty's ſupreme and abſolute power of concluding war or peace; and the third, of ſome prejudice in reaſon of eſtate.

For injuſtice, it is plain, and cannot be denied, that we hear but the one part: whereas that rule, *audi alteram partem*, is not of the formality, but of the eſſence of juſtice: which is therefore figured with both eyes ſhut, and both ears open; becauſe ſhe ſhould hear both ſides, and reſpect neither. So that if we ſhould hap to give a right judgment, it might be *juſtum*, but not *juſte*, without hearing both parties.

For the point of derogation, his lordſhip ſaid, he knew well we were no leſs ready to acknowledge than himſelf, that the crown of *England* was

ever

ever inveſted (amongſt other prerogatives not diſputable) of an abſolute determination and power of concluding and making war and peace: Which that it was no new dotation, but of an ancient foundation in the crown, he would recite unto us a number of precedents in the reigns of ſeveral Kings, and chiefly of thoſe Kings, which come neareſt his Majeſty's own worthineſs; wherein he ſaid, that he would not put his credit upon ciphers and dates; becauſe it was eaſy to miſtake the year of a reign, or number of a roll, but he would avouch them in ſubſtance to be perfect and true, as they are taken out of the records. By which precedents it will appear, that petitions made in parliament to Kings of this realm, his Majeſty's progenitors, intermeddling with matter of war or peace, or inducement thereunto, received ſmall allowance or ſucceſs, but were always put off with dilatory anſwers; ſometimes referring the matter to their council, ſometimes to their letters, ſometimes to their farther pleaſure and advice, and ſuch other forms; expreſſing plainly, that the Kings meant to reſerve matter of that nature entirely to their own power and pleaſure.

In the eighteenth year of King *Edward* I. complaint was made by the commons, againſt the ſubjects of the earl of *Flanders*, with petition of redreſs. The King's anſwer was, *Rex nihil aliud poteſt, quam eodem modo petere:* that is, the King could do no more but make requeſt to the earl of *Flanders*, as requeſt had been made to him; and yet no body will imagine but King *Edward* the firſt was potent enough to have had his reaſon of a count of *Flanders* by a war; and yet his anſwer was, *nihil aliud poteſt*; as giving them to underſtand, that the entering into a war was a matter tranſcendent, that muſt not depend upon ſuch controverſies.

In the fourth year of King *Edward* III. the commons petitioned, that the King would enter into certain covenants and capitulations with the duke of *Brabant*; in which petition there was alſo inſerted ſomewhat touching a money matter. The King's anſwer was, that for that which concerned the monies, they might handle and examine it; but touching the peace, he would do as to himſelf ſeemed good.

In the eighteenth year of King *Edward* III. the commons petitioned, that they might have the trial and proceeding with certain merchants ſtrangers as enemies to the ſtate. The King's anſwer was, it ſhould remain as it did till the King had taken farther order.

In the forty-fifth year of King *Edward* III. the commons complained that their trade with the *Eaſterlings* was not upon equal terms, (which is one of the points inſiſted upon in the preſent petition;) and prayed an alteration and reducement. The King's anſwer was, it ſhall be ſo as occaſion ſhall require.

In the fiftieth year of the ſame King, the commons petitioned to the King for remedy againſt the ſubjects of *Spain*, as they now do. The King's anſwer was, that he would write his letter for remedy. Here is letters of requeſt, no letters of mart: *Nihil poteſt niſi eodem modo petere.*

In the ſame year the merchants of *York* petitioned in parliament againſt the *Hollanders*, and deſired their ſhips might be ſtayed both in *England* and at *Calais*. The King's anſwer was; let it be declared to the King's council, and they ſhall have ſuch remedy as is according to reaſon.

In the ſecond year of King *Richard* II. the merchants of the ſea-coaſt did complain of divers ſpoils upon their ſhips and goods by the *Spaniard*. The King's anſwer was, that with the advice of his council he would procure remedy.

His

His lordſhip cited two other precedents; the one, in the ſecond year of King *Henry* IV. of a petition againſt the merchants of *Genoua*; the other, in the eleventh year of King *Henry* VI. of a petition againſt the merchants of the ſtillyard, which I omit, becauſe they contain no variety of anſwer.

His lordſhip farther cited two precedents concerning other points of prerogative, which are likewiſe flowers of the crown; the one, touching the King's ſupremacy eccleſiaſtical, the other, touching the order of weights and meaſures. The former of them was in the time of King *Richard* II. at what time the commons complained againſt certain encroachments and uſurpations of the pope; and the King's anſwer was, the King hath given order to his council to treat with the biſhops thereof. The other was in the eighteenth year of King *Edward* I. at which time complaint was made againſt uneven weights; and the King's anſwer was, *vocentur partes ad placita regis, & fiat juſtitia:* whereby it appeared, that the Kings of this realm ſtill uſed to refer cauſes petitioned in parliament to the proper places of cognizance and deciſion. But for the matter of war and peace, as appears in all the former precedents, the Kings ever kept it *in ſcrinio pectoris*, in the ſhrines of their own breaſt, aſſiſted and adviſed by their council of eſtate. In as much as his lordſhip did conclude his enumeration of precedents with a notable precedent in the ſeventeenth year of King *Richard* II. a prince of no ſuch glory nor ſtrength; and yet when he made offer to the commons in parliament that they ſhould take into their conſiderations matter of war and peace then in hand; the commons in modeſty excuſed themſelves, and anſwered, the commons will not preſume to treat of ſo high a charge. Out of all which precedents his lordſhip made this inference, that as *dies diem docet*, ſo by theſe examples wiſe men will be admoniſhed to forbear thoſe petitions to princes, which are not likely to have either welcome hearing, or an effectual anſwer.

And for prejudice that might come of handling and debating matter of war and peace in parliament, he doubted not, but that the wiſdom of this houſe did conceive upon what ſecret conſiderations and motives that point did depend. For that there is no King which will providently and maturely enter into a war, but will firſt balance his own forces; ſeek to anticipate confederacies and alliances, revoke his merchants, find an opportunity of the firſt breach, and many other points; which if they once do but take wind, will prove vain and fruſtrate. And therefore that this matter, which is *arcanum imperii*, one of the higheſt myſteries of eſtate, muſt be ſuffered to be kept within the veil: His lordſhip adding, that he knew not well whether in that which he had already ſaid, out of an extreme deſire to give us ſatisfaction, he had not communicated more particulars than perhaps was requiſite. Nevertheleſs he confeſſed, that ſometimes parliaments had been made acquainted with matter of war and peace in a generality; but it was upon one of theſe two motives; when the King and council conceived, that either it was material to have ſome declaration of the zeal and affection of the people; or elſe when the King needed to demand monies and aids for the charge of the wars; wherein if things did ſort to war, we were ſure enough to hear of it: His lordſhip hoping that his Majeſty would find in us no leſs readineſs to ſupport it than to perſuade it.

Now, Mr. Speaker, for the laſt part; wherein his lordſhip conſidered the petition, as it was recommended from us to the upper houſe; his lordſhip delivered thus much from their lordſhips; that they would make a good con-

ſtruction of our deſires, as thoſe which they conceived did rather ſpring out of a feeling of the King's ſtrength, and out of a feeling of the ſubjects wrongs; nay more, out of a wiſdom and depth to declare our forwardneſs, if need were, to aſſiſt his Majeſty's future reſolutions, (which declaration might be of good uſe for his Majeſty's ſervice, when it ſhould be blown abroad;) rather I ſay than that we did in any ſort determine by this their overture, to do that wrong to his Highneſs's ſupreme power, which haply might be inferred by thoſe that were rather apt to make evil than good illations of our proceedings. And yet, that their lordſhips, for the reaſons before made, muſt plainly tell us, that they neither could or would concur with us, nor approve the courſe; and therefore concluded, that it would not be amiſs for us, for our better contentment, to behold the conditions of the laſt peace with *Spain*, which were of a ſtrange nature to him that duly obſerves them; no forces recalled out of the *Low-Countries*; no new forces (as to volunteers) reſtrained to go thither; ſo as the King may be in peace, and never a ſubject in *England* but may be in war: and then to think thus with our ſelves, that that King which would give no ground in making his peace, will not loſe any ground upon juſt provocation to enter into an honourable war. And that in the mean time we ſhould know thus much, that there could not be more forcible negotiation on the King's part but blows to procure remedy of thoſe wrongs; nor more fair promiſes on the King of *Spain*'s part to give contentment concerning the ſame; and therefore that the event muſt be expected.

And thus, Mr. Speaker, have I paſſed over the ſpeech of this worthy lord, whoſe ſpeeches (as I have often ſaid) in regard of his place and judgment, are extraordinary lights to this houſe; and have both the properties of light, that is, conducting and comforting. And although, Mr. Speaker, a man would have thought nothing had been left to be ſaid, yet I ſhall now give you account of another ſpeech full of excellent matter and ornaments, and without iteration: which nevertheleſs I ſhall report more compendiouſly, becauſe I will not offer the ſpeech that wrong as to report it at large, when your minds percaſe and attentions are already wearied.

The other earl, who uſually doth bear a principal part upon all important occaſions, uſed a ſpeech, firſt of preface, then of argument. In his preface he did deliver, that he was perſuaded that both houſes did differ rather in credulity and belief, than in intention and deſire: For it might be their lordſhips did not believe the information ſo far, but yet deſired the reformation as much.

His lordſhip ſaid farther, that the merchant was a ſtate and degree of perſons, not only to be reſpected, but to be prayed for, and graced them with the beſt additions; that they were the convoys of our ſupplies, the vents of our abundance, *Neptune*'s alms-men, and fortune's adventurers. His lordſhip proceeded and ſaid, this queſtion was new to us, but ancient to them; aſſuring us that the King did not bear in vain the device of the thiſtle, with the word, *nemo me laceſſit impunè*; and that as the multiplying of his kingdoms maketh him feel his own power; ſo the multiplying of our loves and affections made him to feel our griefs.

For the arguments or reaſons, they were five in number, which his lordſhip uſed for ſatisfying us why their lordſhips might not concur with us in this petition. The firſt was the compoſition of our houſe, which he took in the firſt foundation thereof to be merely democratical, conſiſting of knights of ſhires, and burgeſſes of towns, and intended to be of thoſe that have their reſidence, vocation, and employment in the places for which they ſerve: and therefore

therefore to have a private and local wiſdom, according to that compaſs, and ſo not fit to examine or determine ſecrets of eſtate, which depend upon ſuch variety of circumſtances, and therefore added to the precedent formerly vouched of the ſeventeenth of King *Richard* II. when the commons diſclaimed to intermeddle in matter of war and peace; that their anſwer was, that they would not preſume to treat of ſo high and variable a matter. And although his lordſhip acknowledged that there be divers gentlemen in the mixture of our houſe, that are of good capacity and inſight in matters of eſtate; yet that was the accident of the perſon, and not the intention of the place; and things were to be taken in the inſtitution, not in the practice.

His lordſhip's ſecond reaſon was, that both by philoſophy and civil law, *ordinatio belli & pacis eſt abſoluti imperii*, a principal flower of the crown; which flowers ought to be ſo dear unto us, as we ought, if need were, to water them with our blood: For if thoſe flowers ſhould by neglect, or upon facility and good affection wither and fall, the garland would not be worth the wearing.

His lordſhip's third reaſon was, that Kings did ſo love to imitate *primum mobile*, as that they do not like to move in borrowed motions: ſo that in thoſe things that they do moſt willingly intend, yet they indure not to be prevented by requeſt: Whereof he did alledge a notable example in King *Edward* III. who would not hearken to the petition of his commons, that beſought him to make the black prince, prince of *Wales:* But yet after that repulſe of their petition, out of his own mere motion he created him.

His lordſhip's fourth reaſon was, that it might be ſome ſcandal to ſtep between the King and his own virtue; and that it was the duty of ſubjects rather to take honours from Kings ſervants and give them to Kings, than to take honours from Kings and give them to their ſervants: which he did very elegantly ſet forth in the example of *Joab*, who lying at the ſiege of *Rabbah*, and finding it could not hold out, writ to *David* to come and take the honour of taking the town.

His lordſhip's laſt reaſon was, that it may caſt ſome aſperſion upon his Majeſty; implying, as if the King ſlept out the ſobs of his ſubjects until he was awaked with the thunderbolt of a parliament.

But his lordſhip's concluſion was very noble, which was with a proteſtation, that what civil threats, conteſtation, art, and argument, can do, hath been uſed already to procure remedy in this cauſe; and a promiſe, that if reaſon of ſtate did permit, as their lordſhips were ready to ſpend their breath in the pleading of that we deſire, ſo they would be ready to ſpend their bloods in the execution thereof.

This was the ſubſtance of that which paſſed.

A

SPEECH

Uſed to the

KING,

By his Majeſty's Sollicitor, being choſen by the Commons as their mouth and meſſenger, for the preſenting to his Majeſty the inſtrument or writing of their Grievances, in the Parliament 7 *Jacobi*.

MOST gracious Sovereign, the knights, citizens, and burgeſſes aſſembled in parliament, in the houſe of your commons, in all humbleneſs do exhibit and preſent unto your ſacred Majeſty, in their own words, though by my hand, their petitions and grievances. They are here conceived and ſet down in writing, according to ancient cuſtom of parliament: They are alſo prefaced according to the manner and taſte of theſe later times. Therefore for me to make any additional preface, were neither warranted, nor convenient; eſpecially ſpeaking before a King; the exactneſs of whoſe judgment ought to ſcatter and chaſe away all unneceſſary ſpeech as the ſun doth a vapour. This only I muſt ſay; ſince this ſeſſion of parliament we have ſeen your glory in the ſolemnity of the creation of this moſt noble prince; we have heard your wiſdom in ſundry excellent ſpeeches which you have delivered amongſt us: Now we hope to find and feel the effects of your goodneſs, in your gracious anſwer to theſe our petitions. For this we are perſuaded that the attribute which was given by one of the wiſeſt writers to two of the beſt Emperors, *divus Nerva & divus Trajanus* (ſo ſaith *Tacitus*) *res olim inſociabiles miſcuerunt, imperium & libertatem*; may be truly applied to your Majeſty. For never was there ſuch a conſervator of regality in a crown, nor ever ſuch a protector of lawful freedom in a ſubject.

ONLY this, excellent Sovereign, let not the ſound of grievances (though it be ſad) ſeem harſh to your princely ears: it is but *gemitus columbae*, the mourning of a dove; with that patience and humility of heart which appertaineth to loving and loyal ſubjects. And far be it from us, but that in the midſt of the ſenſe of our grievances, we ſhould remember and acknowledge the infinite benefits which by your Majeſty, next under God, we do enjoy; which bind us to wiſh unto your life fulneſs of days; and unto your line royal a ſucceſſion and continuance even unto the world's end.

IT reſteth, that unto theſe petitions here included I do add one more that goeth to them all: which is, that if in the words and frame of them there be any thing offenſive; or that we have expreſſed our ſelves otherwiſe than we ſhould or would; that your Majeſty would cover it, and caſt the veil of your grace upon it; and accept of our good intentions, and help them by your benign interpretation.

LASTLY,

LASTLY, I am moſt humbly to crave a particular pardon for my ſelf that have uſed theſe few words: and ſcarcely ſhould have been able to have uſed any at all, in reſpect of the reverence which I bear to your perſon and judgment, had I not been ſomewhat relieved and comforted, by the experience which in my ſervice and acceſs I have had of your continual grace and favour.

A

SPEECH

OF THE

KING's SOLLICITOR,

Uſed unto the Lords at a Conference by Commiſſion from the Commons, moving and perſuading the Lords to join with the Commons in Petition to the King, to obtain liberty to treat of a Compoſition with his Majeſty for Wards and Tenures, in the Parliament, 7 *Jacobi.*

THE knights, citizens, and burgeſſes of the houſe of commons have commanded me to deliver to your lordſhips the cauſes of the conference by them prayed, and by your lordſhips aſſented, for the ſecond buſineſs of this day. They have had report made unto them faithfully of his Majeſty's anſwer declared by my Lord Treaſurer, touching their humble deſire to obtain liberty from his Majeſty to treat of compounding for tenures. And firſt, they think themſelves much bound unto his Majeſty, that in *re nova*, in which caſe princes uſe to be apprehenſive, he hath made a gracious conſtruction of their propoſition. And ſo much they know of that that belongs to the greatneſs of his Majeſty and the greatneſs of the cauſe; as themſelves acknowledge, they ought not to have expected a preſent reſolution, though the wiſe man ſaith, hope deferred is the fainting of the ſoul. But they know their duty to be to attend his Majeſty's times at his good pleaſure. And this they do with the more comfort, becauſe that in his Majeſty's anſwer (matching the times, and weighing the paſſages thereof,) they conceive, in their opinion, rather hope than diſcouragement.

BUT the principal cauſes of the conference now prayed, (beſides theſe ſignifications of duty not to be omitted) are two propoſitions. The one matter of excuſe of themſelves; the other matter of petition. The former of which grows thus. Your lordſhip, my Lord Treaſurer, in your laſt declaration of his Majeſty's anſwer, (which according to the attribute then given unto it, had *imaginem Cæſaris*, fair and lively graven) made this true and effectual diſtribution, that there depended upon tenures, conſiderations of honour, of conſcience, and of utility: of theſe three, utility, as his Majeſty ſet it by for the preſent out of the greatneſs of his mind, ſo we ſet it by out of

the juſtneſs of our deſires: for we never meant but a goodly and worthy augmentation of the profit now received, and not a diminution. But, to ſpeak truly, that conſideration falleth naturally to be examined, when liberty of treaty is granted: but the former two indeed may exclude treaty, and cut it off before it be admitted.

Nevertheless, in this that we ſhall ſay concerning thoſe two, we deſire to be conceived rightly: we mean not to diſpute with his Majeſty what belongeth to ſovereign honour, or his princely conſcience; becauſe we know we are not capable to diſcern them otherwiſe than as men uſe ſometimes to ſee the image of the ſun in a pail of water. But this we ſay for our ſelves, God forbid that we, knowingly, ſhould have propounded any thing that might in our ſenſe and perſuaſion touch either or both; and therefore herein we deſire to be heard, not to inform or perſuade his Majeſty, but to free and excuſe ourſelves.

And firſt, in general, we acknowledge, that this tree of tenures was planted into the prerogative by the ancient common law of this land: that it hath been fenced in and preſerved by many ſtatutes; and that it yieldeth at this day to the King the fruit of a great revenue. But yet notwithſtanding, if upon the ſtem of this tree may be raiſed a pillar of ſupport to the crown permanent and durable as the marble, by inveſting the crown with a more ample, more certain, and more loving dowry than this of tenures; we hope we propound no matter of diſſervice.

But to ſpeak diſtinctly of both, and firſt of honour: wherein I pray your lordſhips, give me leave in a ſubject that may ſeem *ſupra nos*, to handle it rather as we are capable, than as the matter perhaps may require. Your lordſhips well know the various mixture and compoſition of our houſe. We have in our houſe learned civilians that profeſs a law, that we reverence and ſometimes conſult with: they can tell us, that all the laws *de feodis* are but additionals to the ancient civil law; and that the *Roman* Emperors, in the full height of their monarchy, never knew them; ſo that they are not imperial. We have grave profeſſors of the common law, who will define unto us that thoſe are parts of ſovereignty, and of the royal prerogative, which cannot be communicated with ſubjects: but for tenures in ſubſtance, there is none of your lordſhips but have them, and few of us but have them. The King indeed hath a priority or firſt ſervice of his tenures, which ſhews that they are not regal, nor any point of ſovereignty. We have gentlemen of honourable ſervice in the wars both by ſea and land, who can inform us, that when it is in queſtion, who ſhall ſet his foot foremoſt towards the enemy; it is never asked, whether he holds in knight's ſervice or in ſocage. So have we many deputy lieutenants to your lordſhips, and many commiſſioners that have been for muſters and levies, that can tell us, that the ſervice and defence of the realm hath in theſe days little dependency upon tenures. So then we perceive that it is no bond or ligament of government; no ſpur of honour, no bridle of obedience. Time was, when it had other uſes, and the name of knight's ſervice imports it: but *vocabula manent, res fugiunt.* But all this which we have ſpoken we confeſs to be in a vulgar capacity, which nevertheleſs may ſerve for our excuſe, though we ſubmit the thing it ſelf wholly to his Majeſty's judgment.

For matter of conſcience, far be it from us to caſt in any thing willingly, that may trouble that clear fountain of his Majeſty's conſcience. We do confeſs it is a noble protection, that theſe young birds of the nobility and good families, ſhould be gathered and clocked under the wings of the crown. But

But yet, *naturae vis maxima:* and *ſuus cuique diſcretus ſanguis.* Your lordſhips will favour me, to obſerve my former method. The common law itſelf, which is the beſt bounds of our wiſdom, doth even, *in hoc individuo*, prefer the prerogative of the father before the prerogative of the King: for if lands deſcend held in chief from an anceſtor on the part of a mother, to a man's eldeſt ſon, the father being alive, the father ſhall have the cuſtody of the body, and not the King. It is true, that this is only for the father, and not any other parent or anceſtor: but then if you look to the high law of tutelage and protection, and of obedience and duty, which is the relative thereunto; it is not ſaid, honour thy father alone, but honour thy father and mother, *&c.* Again, the civilians can tell us, that there was a ſpecial uſe of the pretorian power for pupils, and yet no tenures. The citizens of *London* can tell us, there be courts of orphans, and yet no tenures. But all this while we pray your lordſhips to conceive, that we think ourſelves not competent to diſcern of the honour of his Majeſty's crown, or the ſhrine of his conſcience; but leave it wholly unto him, and alledge theſe things but in our own excuſe.

For matter of petition, we do continue our moſt humble ſuit by your lordſhip's loving conjunction, that his Majeſty will be pleaſed to open unto us this entrance of his bounty and grace, as to give us liberty to treat. And laſtly, we know his Majeſty's times are not ſubordinate at all but to the globe above. About this time the ſun hath got even with the night, and will riſe apace; and we know *Solomon*'s temple (whereof your lordſhip, my lord treaſurer, ſpake) was not built in a day: and if we ſhall be ſo happy as to take the ax to hew, and the hammer to frame, in this caſe, we know it cannot be without time; and therefore, as far as we may with duty, and without importunity, we moſt humbly deſire an acceleration of his Majeſty's anſwer, according to his good time and royal pleaſure

A

SPEECH

OF THE

KING's SOLLICITOR,

Perſuading the Houſe of Commons to deſiſt from farther queſtion of receiving the King's Meſſages by their Speaker, and from the Body of the Council, as well as from the King's Perſon; in the Parliament 7 *Jac.*

IT is my deſire, that if any the King's buſineſs, either of honour or profit, ſhall paſs the Houſe, it may be not only with external prevailing, but with ſatisfaction of the inward man. For in conſent, where tongue-ſtrings, not heart-ſtrings, make the muſick, that harmony may end in diſcord. To this I ſhall always bend my endeavours.

The

THE King's ſovereignty, and the liberty of parliament, are as the two elements and principles of this eſtate; which, though the one be more active, the other more paſſive, yet they do not croſs or deſtroy the one the other; but they ſtrengthen and maintain the one the other. Take away liberty of parliament, the griefs of the ſubject will bleed inwards: Sharp and eager humours will not evaporate; and then they muſt exulcerate; and ſo may indanger the ſovereignty itſelf. On the other ſide, if the King's ſovereignty receive diminution, or any degree of contempt with us that are born under an hereditary monarchy, (ſo as the motions of our eſtate cannot work in any other frame or engine) it muſt follow, that we ſhall be a *meteor*, or *corpus imperfecte miſtum*; which kind of bodies come ſpeedily to confuſion and diſſolution. And herein it is our happineſs, that we may make the ſame judgment of the King, which *Tacitus* made of *Nerva*: *Divus* Nerva, *res olim diſſociabiles miſcuit, imperium & libertatem. Nerva* did temper things, that before were thought incompatible, ſovereignty and liberty. And it is not amiſs in a great council and a great cauſe to put the other part of the difference, which was ſignificantly expreſſed by the judgment which *Apollonius* made of *Nero*; which was thus: When *Veſpaſian* came out of *Judæa* towards *Italy* to receive the empire, as he paſſed by *Alexandria*, he ſpake with *Apollonius*, a man much admired; and aſked him a queſtion of ſtate: What was *Nero*'s fall or overthrow? *Apollonius* ſaid, *Nero* could tune the harp well: but in government he always either wound up the pins too high, and ſtrain'd the ſtrings too far; or let them down too low, and ſlackened the ſtrings too much. Here we ſee the difference between regular and able princes, and irregular and incapable, *Nerva* and *Nero*. The one tempers and mingles the ſovereignty with the liberty of the ſubject wiſely; and the other doth interchange it, and vary it unequally and abſurdly. Since therefore we have a prince of ſo excellent wiſdom and moderation, of whoſe authority we ought to be tender, as he is likewiſe of our liberty, let us enter into a true and indifferent conſideration, how far forth the caſe in queſtion may touch his authority, and how far forth our liberty: And to ſpeak clearly, in my opinion it concerns his authority much, and our liberty nothing at all.

THE queſtions are two: The one, whether our Speaker be exempted from delivery of a meſſage from the King without our licence? The other, whether it is not all one whether he received it from the body of the council, as if he received it immediately from the King? And I will ſpeak of the laſt firſt, becauſe it is the circumſtance of the preſent caſe.

FIRST, I ſay, let us ſee how it concerns the King, and then how it concerns us? for the King certainly, if it be obſerved, it cannot be denied, but if you may not receive his pleaſure by his repreſentative body, which is his council of his eſtate, you both ſtreighten his Majeſty in point of conveniency, and weaken the reputation of his council. All Kings, though they be Gods on earth, yet (as he ſaid) they are Gods of earth, frail as other men; they may be children, they may be of extreme age; they may be indiſpoſed in health; they may be abſent. In theſe caſes, if their councils may not ſupply their perſons, to what infinite accidents do you expoſe them? Nay more, ſometimes in policy Kings will not be ſeen, but cover themſelves with their council; and if this be taken from them, a great part of their ſafety is taken away. For the other point of weakening the council, you know they are nothing without the King: they are no body-politic; they have no commiſſion under ſeal. So as if you begin to diſtinguiſh and disjoin them from the King, they are *corpus opacum*; for they have *lumen de lumine*: and ſo by diſtinguiſhing you extinguiſh the principal

engine of the eſtate. For it is truly affirmed, that *concilium non habet potestatem delegatam, ſed inhærentem:* and it is but *Rex in cathedra*; the King in his chair or conſiſtory, where his will and decrees, which are in privacy more changeable, are ſettled and fixed.

Now for that which concerns our ſelves. Firſt for dignity, no man muſt think this a diſparagement for us: for the greateſt Kings in *Europe*, by their embaſſadors, receive anſwers and directions from the council in the King's abſence; and if that negociation be fit for the fraternity and party of Kings, it may much leſs be excepted to by ſubjects.

For uſe or benefit, no man can be ſo raw and unacquainted in the affairs of the world, as to conceive there ſhould be any diſadvantage in it, as if ſuch anſwers were leſs firm and certain. For it cannot be ſuppoſed, that men of ſo great caution, as counſellors of eſtate commonly are, (whether you take caution for wiſdom or providence, or for pledges of eſtate or fortune) will ever err, or adventure ſo far as to exceed their warrant. And therefore I conclude, that in this point there can be unto us neither diſgrace nor diſadvantage.

For the point of the Speaker. Firſt, on the King's part, it may have a ſhrewd illation: for it hath a ſhew, as if there could be a ſtronger duty, than the duty of a ſubject to a King. We ſee the degrees and differences of duties in families, between father and ſon, maſter and ſervant; in corporate bodies, between communalties and their officers; recorders, ſtewards, and the like; yet all theſe give place to the King's commandments. The bonds are more ſpecial, but not ſo forcible. On our part, it concerns us nothing. For firſt it is but *de canali*, of the pipe; how the King's meſſage ſhall be conveyed to us, and not of the matter? Neither hath the Speaker any ſuch dominion, as that coming out of his mouth it preſſeth us more than out of a privy counſellor's. Nay, it ſeems to be a great truſt of the King's towards the houſe, when the King doubteth not to put his meſſage into their mouth, as if he ſhould ſpeak to the city by their recorder: therefore methinks we ſhould not entertain this unneceſſary doubt. It is one uſe of wit to make clear things doubtful; but it is a much better uſe of wit to make doubtful things clear; and to that I would men would bend themſelves.

A BRIEF

SPEECH

In the end of the Seſſion of Parliament 7 JACOBI, perſuading ſome ſupply to be given to his MAJESTY; which ſeemed then to ſtand upon doubtful terms, and paſſed upon this Speech.

THE proportion of the King's ſupply is not now in queſtion: for when that ſhall be, it may be I ſhall be of opinion, that we ſhould give ſo now, as we may the better give again. But as things ſtand for the preſent, I think the point of honour and reputation is that which his Majeſty ſtandeth moſt upon, that our gift may at leaſt be like thoſe ſhowers that may ſerve to lay the winds, though they do not ſufficiently water the earth.

To labour to perſuade you, I will not: for I know not into what form to caſt my ſpeech. If I ſhould enter into a laudative (though never ſo due and juſt) of the King's great merits, it may be taken for flattery: If I ſhould ſpeak of the ſtrait obligations which intercede between the King and the ſubject, in caſe of the King's want, it were a kind of concluding the houſe: If I ſhould ſpeak of the dangerous conſequence, which want may reverberate upon ſubjects, it might have ſhew of a ſecret menace.

THESE arguments are, I hope, needleſs, and do better in your minds than in my mouth. But this give me leave to ſay, that whereas the example of *Cyrus* was uſed, who ſought his ſupply from thoſe upon whom he had beſtowed his benefits; we muſt always remember, that there are as well benefits of the ſcepter as benefits of the hand, as well of government as of liberality. Theſe I am ſure we will acknowledge to have come, *plena manu*, amongſt us all, and all thoſe whom we repreſent; and therefore it is every man's head in this caſe that muſt be his counſellor, and every man's heart his orator; and thoſe inward powers are more forcible than any man's ſpeech. I leave it, and wiſh it may go to the queſtion.

A

SPEECH

Deliver'd by the KING's Attorney,

Sir *FRANCIS BACON*,

In the Lower Houſe, when the Houſe was in great heat, and much troubled about the undertakers; which were thought to be ſome able and forward Gentlemen; who to ingratiate themſelves with the KING, were ſaid to have undertaken, that the KING's buſineſs ſhould paſs in that Houſe as his MAJESTY could wiſh. In the Parliament 12 *Jacobi.*

Mr. SPEAKER,

I HAVE been hitherto ſilent in this matter of undertaking, wherein, as I perceive, the houſe is much enwrapped.

FIRST, becauſe (to be plain with you) I did not well underſtand what it meant, or what it was; and I do not love to offer at that that I do not throughly conceive. That private men ſhould undertake for the commons of *England*; why! a man might as well undertake for the four elements. It is a thing ſo giddy, and ſo vaſt, as cannot enter into the brain of a ſober man: and eſpecially in a new parliament; when it was impoſſible to know who ſhould be of the parliament: and when all men that know never ſo little the conſtitution of this houſe, do know it to be ſo open to reaſon, as men do not know when they enter into theſe doors, what mind themſelves will be of, until they hear things argued and debated. Much leſs can any man make a policy of aſſurance, what ſhip ſhall come ſafe home into the harbour in theſe ſeas. I had heard of undertakings in ſeveral kinds. There were undertakers for the plantations of *Derry* and *Colerane* in *Ireland*, the better to command and bridle thoſe parts. There were not long ago ſome undertakers for the north-weſt paſſage: and now there are ſome undertakers for the project of dyed and dreſſed cloths; and in ſhort, every novelty uſeth to be ſtrengthened and made good by a kind of undertaking: But for the ancient parliament of *England*, which moves in a certain manner and ſphere, to be undertaken, it paſſes my reach to conceive what it ſhould be. Muſt we be all dyed and dreſſed, and no pure whites amongſt us? Or muſt there be a new paſſage found for the King's buſineſs by a point of the compaſs that was never ſailed by before? Or muſt there be ſome forts built in this houſe that may command and contain the reſt? Mr. Speaker, I know but two forts in this houſe which the King ever hath; the fort of affection, and the fort of reaſon: the one commands the hearts, and the other commands the heads; and others I know none. I think *Æſop* was a wiſe man that deſcribed the nature of the fly that ſat upon the ſpoke of the chariot wheel, and ſaid to herſelf, what a duſt do I raiſe? So, for my part, I think that all this duſt is raiſed by light rumours and buzzes, and not upon any ſolid ground.

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THE ſecond reaſon that made me ſilent was, becauſe this ſuſpicion and rumour of undertaking ſettles upon no perſon certain. It is like the birds of *Paradiſe* that they have in the *Indies*, that have no feet; and therefore they never light upon any place, but the wind carries them away: and ſuch a thing do I take this rumour to be.

AND laſtly, when that the King had in his two ſeveral ſpeeches freed us from the main of our fears, in affirming directly, that there was no undertaking to him; and that he would have taken it to be no leſs derogation to his own Majeſty than to our merits, to have the acts of his people transferred to particular perſons; that did quiet me thus far, that theſe vapours were not gone up to the head, howſoever they might glow and eſtuate in the body.

NEVERTHELESS, ſince I perceive that this cloud ſtill hangs over the houſe, and that it may do no hurt, as well in fame abroad as in the King's ear, I reſolved with myſelf to do the part of an honeſt voice in this houſe, to counſel you what I think to be the beſt.

WHEREIN firſt, I will ſpeak plainly of the pernicious effects of the accident of this bruit, and opinion of undertaking towards particulars, towards the houſe, towards the King, and towards the people.

SECONDLY, I will tell you, in mine opinion, what undertaking is tolerable, and how far it may be juſtified with a good mind; and on the other ſide, this ſame ripping up of the queſtion of undertakers, how far it may proceed from a good mind, and in what kind it may be thought malicious and dangerous.

THIRDLY, I will ſhew you my poor advice, what means there are to put an end to this queſtion of undertaking; not falling for the preſent upon a preciſe opinion, but breaking it, how many ways there be by which you may get out of it, and leaving the choice of them to a debate at the committee.

AND laſtly, I will adviſe you how things are to be handled at the committee, to avoid diſtraction and loſs of time.

FOR the firſt of theſe, I can ſay to you but as the ſcripture ſaith, *Si invicem mordetis, ab invicem conſumemini*; if ye fret and gall one another's reputation, the end will be, that every man ſhall go hence, like coin cried down, of leſs price than he came hither. If ſome ſhall be thought to fawn upon the King's buſineſs openly, and others to croſs it ſecretly, ſome ſhall be thought practiſers that would pluck the cards, and others ſhould be thought papiſts that would ſhuffle the cards; what a miſery is this, that we ſhould come together to fool one another, inſtead of procuring the public good?

AND this ends not in particulars, but will make the whole houſe contemptible: for now I hear men ſay, that this queſtion of undertaking is the predominant matter of this houſe. So that we are now, according to the parable of *Jotham* in the caſe of the trees of the foreſt, that when queſtion was, whether the vine ſhould reign over them? that might not be: and whether the olive would reign over them? that might not be: but we have accepted the bramble to reign over us. For it ſeems that the good vine of the King's graces, that is not ſo much in eſteem; and the good oil, whereby we ſhould ſalve and relieve the wants of the eſtate and crown, that is laid aſide too: and this bramble of contention and emulation; this *Abimelech*, which, (as was truly ſaid by an underſtanding gentleman) is a baſtard; (for every fame that wants a head, is *filius populi*) this muſt reign and rule amongſt us.

THEN for the King, nothing can be more oppoſite, *ex diametro*, to his ends and hopes than this: for you have heard him profeſs like a King, and

like a gracious King, that he doth not ſo much reſpect his preſent ſupply as this demonſtration, that the people's hearts are more knit to him than before. Now then if the iſſue ſhall be this, that whatſoever ſhall be done for him, ſhall be thought to be done but by a number of perſons that ſhall be laboured and pack'd; this will rather be a ſign of diffidence and alienation, than of a natural benevolence and affection in his people at home; and rather matter of diſreputation, than of honour abroad. So that to ſpeak plainly to you, the King were better call for a new pair of cards, than play upon theſe if they be pack'd.

And then for the people, it is my manner ever to look as well beyond a parliament, as upon a parliament; and if they abroad ſhall think themſelves betrayed by thoſe that are their deputies and attorneys here, it is true we may bind them and conclude them, but it will be with ſuch murmur and inſatisfaction as I would be loth to ſee.

These things might be diſſembled, and ſo things left to bleed inwards; but that is not the way to cure them. And therefore I have ſearched the ſore, in hope that you will endeavour the medicine.

But this to do more throughly, I muſt proceed to my ſecond part, to tell you clearly and diſtinctly what is to be ſet on the right hand, and what on the left in this buſineſs.

First, if any man hath done good offices to adviſe the King to call a parliament, and to increaſe the good affection and confidence of his Majeſty towards his people; I ſay, that ſuch a perſon doth rather merit well than commit any error. Nay farther, if any man hath, out of his own good mind, given an opinion touching the minds of the parliament in general; how it is probable they are like to be found, and that they will have a due feeling of the King's wants, and will not deal dryly or illiberally with him; this man that doth but think of other men's minds, as he finds his own, is not to be blamed. Nay farther, if any man hath coupled this with good wiſhes and propoſitions, that the King do comfort the hearts of his people, and teſtify his own love to them, by filing off the harſhneſs of his *prerogative*, retaining the ſubſtance and ſtrength; and to that purpoſe, like the good houſholder in the ſcripture, that brought forth old ſtore and new, hath revolved the petitions and propoſitions of the laſt parliament, and added new, I ſay this man hath ſown good ſeed; and he that ſhall draw him into envy for it ſows tares. Thus much of the right hand. But on the other ſide, if any ſhall mediately or immediately infuſe into his Majeſty, or to others, that the parliament is as *Cato* ſaid of the *Romans*, like ſheep, that a man were better drive a flock of them than one of them: And however they may be wiſe men ſeverally, yet in this aſſembly they are guided by ſome few, which if they be made and aſſured, the reſt will eaſily follow: This is a plain robbery of the King of honour, and his ſubjects of thanks, and it is to make the parliament vile and ſervile in the eyes of their Sovereign; and I count it no better than a ſupplanting of the King and kingdom. Again, if a man ſhall make this impreſſion, that it ſhall be enough for the King to ſend us ſome things of ſhew that may ſerve for colours, and let ſome eloquent tales be told of them, and that will ſerve *ad faciendum populum*, any ſuch perſon will find, that this houſe can well ſkill of falſe lights, and that it is no wooing tokens, but the trueſt love already planted in the breaſt of the ſubjects that will make them do for the King. And this is my opinion, touching thoſe that may have perſuaded a parliament. Take it on the other ſide (for I mean in all things to deal plainly) if any man hath been diffident touching the call of a parliament,

thinking that the beſt means were firſt for the King to make his utmoſt tryal to ſubſiſt of himſelf, and his own means; I ſay an honeſt and faithful heart might conſent to that opinion, and the event it ſeems doth not greatly diſcredit it hitherto. Again, if any man ſhall have been of opinion, that it is not a particular party that can bind the houſe; nor, that it is not ſhews or colours can pleaſe the houſe; I ſay, that man though his ſpeech tend to diſcouragement, yet it is coupled with providence. But by your leave, if any man ſince the parliament was called, or when it was in ſpeech, ſhall have laid plots to croſs the good will of the parliament to the King; by poſſeſſing them that a few ſhall have the thanks, and that they are (as it were) bought, and ſold, and betrayed; and that that which the King offers them are but baits prepared by particular perſons; or have raiſed rumours that it is a pack'd parliament; to the end nothing may be done, but that the parliament may be diſſolved (as gameſters uſe to call for new cards, when they miſtruſt a pack:) I ſay, theſe are engines and devices, naught, malign, and ſeditious.

Now for the remedy, I ſhall rather break the matter, as I ſaid in the beginning, than adviſe poſitively. I know but three ways. Some meſſage of declaration to the King. Some entry or proteſtation amongſt our ſelves, or ſome ſtrict and punctual examination. As for the laſt of theſe, I aſſure you I am not againſt it, if I could tell where to begin, or where to end. For certainly I have often ſeen it, that things when they are in ſmother trouble more than when they break out. Smoke blinds the eyes, but when it blazeth forth into flame it gives light to the eyes. But then if you fall to an examination, ſome perſon muſt be charged, ſome matter muſt be charged; and the manner of that matter muſt be likewiſe charged; for it may be in a good faſhion, and it may be in a bad, in as much difference as between black and white: and then how far men will ingenuouſly confeſs, how far they will politickly deny, and what we can make and gather upon their confeſſion; and how we ſhall prove againſt their denial, it is an endleſs piece of work, and I doubt that we ſhall grow weary of it.

For a meſſage to the King, it is the courſe I like beſt, ſo it be carefully and conſiderately handled: for if we ſhall repreſent to the King the nature of this body as it is, without the veils or ſhadows that have been caſt upon it, I think we ſhall do him honour, and our ſelves right.

For any thing that is to be done amongſt ourſelves, I do not ſee much gained by it, becauſe it goes no farther than ourſelves; yet if any thing can be wiſely conceived to that end, I ſhall not be againſt it; but I think the purpoſe of it is fitteſt to be, rather that the houſe conceives that all this is but a miſunderſtanding, than to take knowledge that there is indeed a juſt ground, and then to ſeek by a proteſtation to give it a remedy. For proteſtations, and profeſſions, and apologies, I never found them very fortunate; but they rather encreaſe ſuſpicion than clear it.

Why then the laſt part is, that theſe things be handled at the committee ſeriouſly and temperately; wherein I wiſh that theſe four degrees of queſtions were handled in order.

First, whether we ſhall do any thing at all in it, or paſs by it, and let it ſleep?

Secondly, whether we ſhall enter into a particular examination of it?

Thirdly, whether we ſhall content our ſelves with ſome entry or proteſtation among ourſelves?

And fourthly, whether we ſhall proceed to a meſſage to the King; and what?

Thus

THUS I have told you my opinion. I know it had been more ſafe and politic to have been ſilent, but it is perhaps more honeſt and loving to ſpeak. The old verſe is; *Nam nulli tacuiſſe nocet, nocet eſſe locutum.* But by your leave *David* ſaith, *ſilui a bonis, & dolor meus renovatus eſt.* When a man ſpeaketh, he may be wounded by others; but if he hold his peace from good things he wounds himſelf. So I have done my part, and leave it to you to do that which you ſhall judge to be the beſt.

The Effect of that which was ſpoken by the LORD KEEPER of the GREAT SEAL of *England*, at the taking of his place in Chancery; in performance of the CHARGE his MAJESTY had given him when he received the Seal 1617.

BEFORE I enter into the buſineſs of the court, I ſhall take advantage of ſo many honourable witneſſes to publiſh and make known ſummarily, what charge the King's moſt excellent Majeſty gave me when I received the ſeal, and what orders and reſolutions my ſelf have taken in conformity to that charge, that the King may have the honour of direction, and I the part of obedience; whereby your lordſhips, and the reſt of the preſence, ſhall ſee the whole time of my ſitting in the chancery, (which may be longer or ſhorter, as pleaſe God and the King) contracted into one hour. And this I do for three cauſes.

FIRST, to give an account to the King of his commandment.

SECONDLY, that I may be a guard and cuſtody to my ſelf, and my own doings; that I do not ſwerve or recede from any thing that I have profeſſed in ſo noble a company.

AND thirdly, that all men that have to do with the chancery, or the ſeal, may know what they ſhall expect, and both ſet their hearts and my ears at reſt; not moving me to any thing againſt theſe rules; knowing that my anſwer is now turned from a *nolumus* into a *non poſſumus*. It is no more, I will not, but I cannot after this declaration.

AND this I do alſo under three cautions.

THE firſt is that there be ſome things of a more ſecret and council-like nature, which are rather to be acted than publiſhed. But theſe things which I ſhall ſpeak of to-day are of a publick nature.

THE ſecond is, that I will not trouble this preſence with every particular, which would be too long; but ſelect thoſe things which are of greateſt efficacy, and conduce moſt *ad ſummas rerum*; leaving many other particulars to be ſet down in a public table, according to the good example of my laſt predeceſſor, in his beginning.

AND laſtly, that theſe imperatives, which I have made but to my ſelf, and my times, be without prejudice to the authority of the court, or wiſer men that may ſucceed me: and chiefly that they are wholly ſubmitted unto the great wiſdom of my Sovereign, (the abſoluteſt Prince in judicature that hath been in the chriſtian world;) for if any of theſe things which I intend to be ſubordinate to his directions, ſhall be thought by his Majeſty to be inordinate, I ſhall be moſt ready to reform them. Theſe things are but *tanquam album prætoris*; for ſo did the *Roman prætors* (which have the greateſt affinity with

with the juriſdiction of the chancellor here) who uſed to ſet down at their entrance, how they would uſe their juriſdiction. And this I ſhall do, my lords, in *verbis maſculis*; no flouriſhing or painted words, but ſuch as are fit to go before deeds.

THE King's charge, which is my lanthorn, reſted upon four heads.

THE firſt was, that I ſhould contain the juriſdiction of the court within its true and due limits, without ſwelling or exceſs.

THE ſecond, that I ſhould think the putting of the great ſeal to letters patents, was not a matter of courſe after precedent warrants; but that I ſhould take it to be the maturity and fullneſs of the King's intentions: and therefore that it was one of the greateſt parts of my truſt, if I ſaw any ſcruple or cauſe of ſtay, that I ſhould acquaint him, concluding with a *quod dubites ne feceris.*

THE third was, that I ſhould retrench all unneceſſary delays, that the ſubject might find that he did enjoy the ſame remedy againſt the fainting of the ſeal, and againſt the conſumption of the means and eſtate; which was ſpeedy juſtice; *bis dat, qui cito dat.*

THE fourth was, that juſtice might paſs with as eaſy charge as might be; and that thoſe ſame brambles that grow about juſtice of needleſs charge and expence, and all manner of exactions, might be rooted out ſo far as might be.

THESE commandments, my lords, are righteous, and (as I may term them) ſacred; and therefore to uſe a ſacred form, I pray God bleſs the King for his great care over the juſtice of the land, and give me, his poor ſervant, grace and power to obſerve his precepts.

NOW for a beginning towards it, I have ſet down and applied particular orders to every one of theſe four general heads.

FOR the exceſs or tumour of this court of chancery, I ſhall divide it into five natures.

THE firſt is, when the court doth embrace or retain cauſes both in matter and circumſtance merely determinable and fit for the common law: For, my lords, the chancery is ordained to ſupply the law, and not to ſubvert the law. Now to deſcribe unto you, or delineate what thoſe cauſes are (and upon what differences) that are fit for the court, were too long a lecture. But I will tell you what remedy I have prepared. I will keep the keys of the court my ſelf, and I will never refer any demurrer or plea (tending to diſcharge or diſmiſs the court of the cauſe) to any maſter of the chancery, but judge of it myſelf, or at leaſt the maſter of the rolls. Nay farther, I will appoint regularly, that on *Tueſday* in every week (which is the day of orders) firſt to hear all motions of that nature before any other, that the ſubject may have his *vale* at firſt without farther attending, and that the court do not keep and accumulate a miſcellany and confuſion of cauſes of all natures.

THE ſecond point concerneth the time of the complaint, and the late comers into the chancery; which ſtay till a judgment be paſſed againſt them at the common law, and then complain; wherein your lordſhips may have heard a great rattle and a noiſe of a *praemunire*, and I cannot tell what. But that queſtion the King hath ſettled according to the ancient precedents in all times continued. And this I will ſay, that the opinion not to relieve any caſe after judgment, would be a guilty opinion; guilty of the ruin and naufrage, and periſhing of infinite ſubjects: and as the King found it well out, why ſhould a man fly into the chancery before he be hurt? The whole need not the phyſician, but the ſick. But, my lords, the power would be preſerved,

ſerved, but then the practice would be moderate. My rule ſhall be therefore, that in caſe of complaints after judgment, (except the judgments be upon *nihil dicit*, which are but diſguiſes of judgment obtained in contempt of a preceeding order of this court) yea, and after verdicts alſo, I will have the party complainant enter into good bond to prove his ſuggeſtion: ſo that if he will be relieved againſt a judgment at common law upon matter of equity, he ſhall do it, *tanquam in vinculis*, at his peril.

THE third point of exceſs may be the over-frequent and facile granting of injunctions for the ſtaying of the common laws, or the altering poſſeſſions; wherein theſe ſhall be my rules.

I WILL grant no injunction merely upon priority of ſuit; that is to ſay, becauſe this court was firſt poſſeſſed: a thing that was well reformed in the late lord chancellor's time, but uſed in Chancellor *Bromley*'s time; inſomuch, as I remember, that Mr. *Dalton* the counſellor at law put a paſquil upon the court in nature of a bill; for ſeeing it was no more: but, my lord, the bill came in on *Monday*, and the arreſt at common law was on *Tueſday*, I pray the injunction upon priority of ſuit: He cauſed his client that had a looſe debtor, to put a bill into the chancery before the bond due to him was forfeited, to deſire an order that he might have his money at the day, becauſe he would be ſure to be before the other. I do not mean to make it a matter of an horſe-race or poſting who ſhall be firſt in chancery, or in courts of law.

NEITHER will I grant an injunction upon matter contained in the bill only, be it never ſo ſmooth and ſpecious; but upon matter confeſſed in the defendant's anſwer, or matter pregnant in writing, or of record; or upon contempt of the defendant in not appearing, or not anſwering, or trifling with the court by inſufficient anſwering. For then it may be thought the defendant ſtands out upon purpoſe to get the ſtart at the common law, and ſo to take advantage of his own contempt, which may not be ſuffered.

As for injunctions for poſſeſſion, I ſhall maintain poſſeſſions as they were at the time of the bill exhibited; and for the ſpace of a year before, except the poſſeſſion were gotten by force or by any trick.

NEITHER will I alter poſſeſſion upon interlocutory orders, until a decree; except upon matter plainly confeſſed in the defendant's anſwer, joined with a plain diſability and inſolvency of the defendant's to anſwer the profits.

As for taking the poſſeſſion away in reſpect of contempts, I will have all the proceedings of the court ſpent firſt, and a ſequeſtration of the profits before I come to an injunction.

THE fourth part of exceſs is concerning the communicating of the authority of the chancellor too far; and making, upon the matter, too many chancellors, by relying too much upon reports of the maſters of the chancery as concludent. I know, my lords, the maſters of the chancery are reverend men; and the great maſs of buſineſs of the court cannot be ſped without them; and it is a thing the chancellor may ſoon fall into for his own eaſe, to rely too much upon them. But the courſe that I will take generally ſhall be this; that I will make no binding order upon any report of the maſter's, without giving a ſeven night's day at the leaſt, to ſhew cauſe againſt the report; (which nevertheleſs I will have done modeſtly, and with due reverence towards them:) and again, I muſt utterly diſcontinue the making of an hypothetical or conditional order; that if a maſter of the chancery do certify thus, that then it is ordered without farther motion; for that is a ſurprize, and gives no time for contradiction.

THE laſt point of exceſs is, if a chancellor ſhall be ſo much of himſelf as he ſhould neglect aſſiſtance of reverend judges in caſes of difficulty, (eſpecially if they touch upon law) or calling them, ſhall do it, but *pro forma tantum*, and give no due reſpect to their opinions: wherein, my lords, preſerving the dignity and majeſty of the court, (which I count rather increaſed than diminiſhed by grave and due aſſiſtance) I ſhall never be found ſo ſovereign or abundant in mine own ſenſe, but I ſhall both deſire and make true uſe of aſſiſtants. Nay, I aſſure your lordſhips, if I ſhould find any main diverſity of opinion of my aſſiſtants from mine own, though I know well the judicature wholly reſides in myſelf; yet I think I ſhould have recourſe to the oracle of the King's own judgment, before I ſhould pronounce. And ſo much for the temperate uſe of the authority of this court, wherein the health of the court doth much conſiſt, as that of the body conſiſts in temperance.

FOR the ſecond commandment of his Majeſty, touching ſtaying of grants at the great ſeal; there may be juſt cauſe of ſtay, either in the matter of the grant, or in the manner of paſſing the ſame. Out of both which I extract theſe ſix principal caſes which I will now make known: All which, nevertheleſs, I underſtand to be wholly ſubmitted to his Majeſty's will and pleaſure, after by me he ſhall have been informed: for if *iteratum mandatum* do come, obedience is better than ſacrifice.

THE firſt caſe is, where any matter of revenue, or treaſure, or profit, paſſeth from his Majeſty; my firſt duty ſhall be to examine, whether the grant hath paſſed in the due and natural courſe by the great officers of the revenue (the lord treaſurer and chancellor of the exchequer) and with their privity; which if I find it not to be, I muſt preſume it to have paſſed in the dark, and by a kind of ſurreption; and will make ſtay of it till his Majeſty's pleaſure be farther known.

SECONDLY, if it be a grant that is not merely vulgar, and hath not of courſe paſſed at the ſignet by a *fac ſimile*, but needeth ſcience, my duty ſhall be to examine whether it hath paſſed by the learned counſel and had their dockets; which is that which his Majeſty reads, and that leads him. And if I find it otherwiſe (although the matter were not in itſelf inconvenient) yet I hold it juſt cauſe of ſtay (for precedent's ſake) to keep men in the right way.

THIRDLY, if it be a grant which I conceive (out of my little knowledge) to be againſt the law; of which nature *Theodoſius* was wont to ſay, when he was preſſed, I ſaid it, but I granted it not if it be unlawful: I will call the learned counſel to it, (as well him that drew the book as the reſt) or ſome of them: and if we find cauſe, I will inform his Majeſty of our opinion, either by my ſelf or ſome of them. For as for the judges they are judges of grants paſt, but not of grants to come, except the King call them.

FOURTHLY, if the grants be againſt the King's book of bounty, I am expreſly commanded to ſtay them until the King either reviſe his book in general, or give direction in the particular.

FIFTHLY, if as a counſellor of eſtate, I do foreſee inconvenience to enſue by the grant in reaſon of eſtate, in reſpect of the King's honour, or diſcontent, or murmur of the people; I will not truſt mine own judgment, but I will either acquaint his Majeſty with it, or the council table, or ſome ſuch of my lords as I ſhall think fit.

LASTLY, for matter of pardons; if it be of treaſon, miſpriſion of treaſon, murder, either expreſſed or involute, by a *non-obſtante*; or of a piracy, or *praemunire*, or of fines, or exemplary puniſhment in ſtar-chamber, or of ſome other natures;

natures; I ſhall by the grace of God ſtay them until his Majeſty (who is the fountain of grace) may reſolve between God and him (underſtanding the caſe) how far grace ſhall abound, or ſuper-abound.

And if it be of perſons attainted and convicted of robbery, burglary, *&c.* then will I examine whether the pardons paſſed the hand of any juſtice of aſſize, or other commiſſioners, before whom the trial was made; and if not, I think it my duty alſo to ſtay them.

Thus your lordſhips ſee in this matter of the ſeal, agreeable to the commandment I have received, I mean to walk in the light; ſo that men may know where to find me: and this publiſhing thereof plainly, I hope will ſave the King from a great deal of abuſe, and me from a great deal of envy; when men ſhall ſee that no particular turn or end leads me, but a general rule.

For the third general head of his Majeſty's precepts concerning ſpeedy juſtice, I am reſolved that my decree ſhall come ſpeedily (if not inſtantly) after the hearing, and my ſigned decree pronounced. For it hath been a manner much uſed of late in my lord's laſt time, (of whom I learn much to imitate, and with due reverence to his memory let me ſpeak it, much to avoid;) that upon the ſolemn and full hearing of a cauſe nothing is pronounced in court, but breviates are required to be made; which I do not diſlike in itſelf in cauſes perplexed. For I confeſs I have ſomewhat of the cunctative; and I am of opinion, that whoſoever is not wiſer upon advice than upon the ſudden, the ſame man is no wiſer at fifty years old than he was at thirty. And it was my father's ordinary word, you muſt give me time. But yet I find that when ſuch breviates were taken, the cauſe was ſometimes forgotten a term or two, and then ſet down for a new hearing, or a rehearing three or four terms after. Of which kind of intermiſſion I ſee no uſe, and therefore I will promiſe regularly to pronounce my decree within few days after my hearing; and to ſign my decree at leaſt in the vacation after the pronouncing. For freſh juſtice is the ſweeteſt. And beſides, juſtice ought not to be delayed; and it will alſo avoid all means-making or labouring; for there ought to be no labouring in cauſes, but the labouring of the counſel at the bar.

Again, becauſe juſtice is a ſacred thing, and the end for which I am called to this place, and therefore is my way to heaven; (and if it be ſhorter, it is never a whit the worſe) I ſhall by the grace of God (as far as God will give me ſtrength) add the afternoon to the forenoon, and ſome fourth night of the vacation to the term, for the expediting and clearing of the cauſes of the court; only the depth of the three long vacations I would reſerve in ſome meaſure free for buſineſs of eſtate, and for ſtudies of arts and ſciences, to which in my nature I am moſt inclined.

There is another point of true expedition, which reſteth much in my ſelf, and that is in the manner of giving orders. For I have ſeen an affectation of diſpatch turn utterly to delay and length: for the manner of it is to take the tale out of the counſellor at bar his mouth, and to give a curſory order, nothing tending or conducing to the end of the buſineſs. It makes me remember what I heard one ſay of a judge that ſat in the chancery; that he would make eighty orders in a morning out of the way, and it was out of the way indeed; for it was nothing to the end of the buſineſs: and this is that which makes ſixty, eighty, a hundred orders in a cauſe, to and fro, begetting one another; and like *Penelope*'s web, doing and undoing. But I mean not to purchaſe the praiſe of expeditive in that kind; but as one that have a feeling of my duty, and of the caſe of others, my endeavour ſhall be to hear patiently,

and

and to caſt my order into ſuch a mould as may ſooneſt bring the ſubject to the end of his journey.

As for ſuch delays as may concern others, the great abuſe is, that if the plaintiff have got an injunction to ſtay ſuits at common law, then he will ſpin on his cauſe at length. But by the grace of God, I will make injunctions an hard pillow to ſleep on; for if I find that he proſecutes not with effect, he may hap, when he is awake, find not only his injunction diſſolved, but his cauſe diſmiſſed.

THERE be other particular orders, I mean to take for *non* proſecution or faint proſecution, wherewith I will not trouble you now, becauſe *ſumma ſequar faſtigia rerum.* And ſo much for matter of expedition.

Now for the fourth and laſt point of the King's commandment; for the cutting off of unneceſſary charge of the ſubject, a great part of it is fulfilled in the precedent article, touching expedition; for it is the length of ſuits that doth multiply charge chiefly; but yet there are ſome other remedies that conduce thereunto.

FIRST, therefore I ſhall maintain ſtrictly, and with ſeverity, the former orders which I find made by my lord chancellor for the immoderate and needleſs prolixity, and length of bills, and anſwers, and ſo forth; as well in puniſhing the party, as fining the counſel, whoſe hand I ſhall find at ſuch bills, anſwers, *&c.*

SECONDLY, for all the examinations taken in the court, I do give charge unto the examiners (upon peril of their places) that they do not uſe idle repetitions, or needleſs circumſtances, in ſetting down the depoſitions taken by them; and I would I could help it likewiſe in commiſſions in the country, but that is almoſt impoſſible.

THIRDLY, I ſhall take a diligent ſurvey of the copies in chancery, that they have their juſt number of lines, and without open and waſtful writing.

FOURTHLY, I ſhall be careful that there be no exaction of any new fees, but according as they have been heretofore ſet and tabled.

As for lawyers fees, I muſt leave to the conſcience and merit of the lawyer; and the eſtimation and gratitude of the client: but yet this I can do; I know there have uſed to attend this bar a number of lawyers that have not been heard ſometimes, ſcarce once or twice in a term; and that makes the client ſeek to great counſel and favourites (as they call them, a term fitter for Kings than judges) and that for every order that a mean lawyer might diſpatch, and as well. Therefore to help the generality of lawyers, and therein to eaſe the client, I will conſtantly obſerve that every *Tueſday*, and other days of orders, after nine a clock ſtrucken, I will hear the bar until eleven, or half an hour after ten at the leaſt. And ſince we are upon the point whom I will hear, your lordſhips will give me leave to tell you a fancy. It falls out, that there be three of us the King's ſervants in great place, that are lawyers by deſcent, Mr. Attorney ſon of a judge, Mr. Sollicitor likewiſe ſon of a judge, and my ſelf a chancellor's ſon.

Now becauſe the law roots ſo well in my time, I will water it at the root thus far, as beſides theſe great ones, I will hear any judge's ſon before a ſergeant, and any ſergeant's ſon before a reader.

LASTLY, for the better eaſe of the ſubjects, and the bridling of contentious ſuits, I ſhall give better (that is greater) coſts where the ſuggeſtions are not proved, than hath been hitherto uſed.

THERE be divers other orders for the better reglement of this court; and for granting of writs, and for granting of benefices and other things which I ſhall ſet down in a table. But I will deal with no other

to-day, but ſuch as have a proper relation to his Majeſty's commandment; it being my comfort that I ſerve ſuch a maſter that I ſhall need to be but a conduit for the conveying only of his goodneſs to his people. And it is true, that I do affect and aſpire to make good that ſaying; that *optimus magiſtratus præſtat optimae legi*; which is true in his Majeſty. But for my ſelf, I doubt I ſhall not attain it. But yet I have a domeſtical example to follow. My lords, I have no more to ſay, but now I will go on to the buſineſs of the court.

THE

SPEECH

Which was uſed by the LORD-KEEPER of the GREAT SEAL in the STAR-CHAMBER before the Summer Circuits, the KING being then in *Scotland*, 1617.

THE King by his perfect declaration publiſhed in this place concerning judges and juſtices, hath made the ſpeech of his chancellor, accuſtomed before the circuits, rather of ceremony than of uſe. For as in his book to his ſon he hath ſet forth a true character and platform of a King; ſo in this his ſpeech he hath done the like of a judge and juſtice: which ſheweth, that as his Majeſty is excellently able to govern in chief; ſo he is likewiſe well ſeen and skilful in the inferior offices and ſtages of juſtice and government; which is a thing very rare in Kings.

YET nevertheleſs, ſomewhat muſt be ſaid to fulfil an old obſervance; but yet upon the King's grounds, and very briefly: for as *Solomon* ſaith in another caſe, In theſe things who is he that can come after the King?

FIRST, You that are the judges of circuits, are as it were the planets of the kingdom; (I do you no diſhonour in giving you that name;) and no doubt you have a great ſtroke in the frame of this government, as the other have in the great frame of the world. Do therefore as they do, move always, and be carried with the motion of your firſt mover, which is your Sovereign. A popular judge is a deformed thing: and *plaudites* are fitter for players than for magiſtrates. Do good to the people, love them and give them juſtice; but let it be as the *Pſalm* ſaith, *nihil inde expectantes*; looking for nothing, neither praiſe nor profit.

YET my meaning is not when I wiſh you to take heed of popularity, that you ſhould be imperious and ſtrange to the gentlemen of the country. You are above them in power, but your rank is not much unequal; and learn this, that power is ever of greateſt ſtrength, when it is civilly carried.

SECONDLY, You muſt remember, that beſides your ordinary adminiſtration of juſtice, you do carry the two glaſſes or mirrors of the ſtate; for it is your duty in theſe your viſitations, to repreſent to the people the graces and care of the King: And again, upon your return, to preſent to the King the diſtaſtes and griefs of the people.

MARK what the King ſays in his book; procure reverence to the King and the law; inform my people truly of me, (which we know is hard to do according to the excellency of his merit, but yet endeavour it) how zealous I am for religion; how I deſire law may be maintained and flouriſh; that every court ſhould have its juriſdiction; that every ſubject ſhould ſubmit himſelf to the law. And of this you have had of late no ſmall occaſion of notice and remembrance, by the great and ſtrait charge that the King hath given me as keeper of his ſeal, for the governing of the chancery without tumour or exceſs.

AGAIN, *e re nata*, you at this preſent ought to make the people know and conſider the King's bleſſed care and providence in governing this realm in his abſence: ſo that ſitting at the helm of another kingdom, not without great affairs and buſineſs; yet he governs all things here by his letters and directions, as punctually and perfectly as if he were preſent.

I ASSURE you, my lords of the council and I do much admire the extenſion and latitude of his care in all things.

IN the high commiſſion he did conceive a ſinew of government was a little ſhrunk; he recommended the care of it.

HE hath called for the accounts of the laſt circuit from the judges to be tranſmitted unto him in *Scotland*.

TOUCHING the infeſtation of pirates, he hath been careful, and is, and hath put things in a way.

ALL things that concern the reformation or the plantation of *Ireland*; he hath given in them punctual and reſolute directions. All this in abſence.

I GIVE but a few inſtances of a public nature; the ſecrets of council I may not enter into, though his diſpatches into *France*, *Spain*, and the *Low-Countries*, now in his abſence, are alſo notorious as to the outward ſending. So that I muſt conclude, that his Majeſty wants but more kingdoms, for I ſee he could ſuffice to all.

As for the other glaſs I told you of, of repreſenting to the King the griefs of his people, without doubt it is properly your part; for the King ought to be informed of any thing amiſs in the ſtate of his countries from the obſervations and relations of the judges (that indeed know the pulſe of the country) rather than from diſcourſe. But for this glaſs (thanks be to God) I do hear from you all, that there was never greater peace, obedience, and contentment in the country; though the beſt governments be always like the faireſt cryſtals, wherein every little icicle or grain is ſeen, which in a fouler ſtone is never perceived.

Now to ſome particulars, and not many: of all other things I muſt begin as the King begins; that is with the cauſe of religion, and eſpecially the hollow church-papiſt. St. *Auguſtin* hath a good compariſon of ſuch men, affirming, that they are like the roots of nettles which themſelves ſting not, but yet they bear all the ſtinging leaves: let me know of ſuch roots, and I will root them out of the country.

NEXT, for the matter of religion; in the principal place I recommend both to you and to the juſtices, the countenancing of godly and zealous preachers. I mean not ſectaries or novelliſts, but thoſe which are ſound and conform, and yet pious and reverend: for there will be a perpetual defection, except you keep men in by preaching, as well as law doth by puniſhing; and commonly ſpiritual diſeaſes are not cured but by ſpiritual remedies.

NEXT, let me commend unto you the repreſſing (as much as may be) of faction in the countries, of which enſue infinite inconveniencies, and perturbations

bations of all good order, and croſſing of all good ſervice in court or country, or whereſoever. *Cicero*, when he was conſul, had deviſed a fine remedy (a mild one, but an effectual and apt one) for he ſaith, *eos qui otium perturbant reddam otioſos.* Thoſe that trouble others quiet, I will give them quiet; they ſhall have nothing to do, nor no authority ſhall be put into their hands. If I may know from you, of any who are in the country that are heads or hands of faction, or men of turbulent ſpirits; I ſhall give them *Cicero*'s reward, as much as in me is.

To conclude, ſtudy the King's book, and ſtudy your ſelves how you profit by it, and all ſhall be well. And you the juſtices of peace in particular, let me ſay this to you, never King of this realm did you ſo much honour as the King hath done you in his ſpeech, by being your immediate director, and by ſorting you and your ſervice with the ſervice of ambaſſadors, and of his neareſt attendants. Nay more, it ſeems his Majeſty is willing to do the ſtate of juſtice of peace honour actively alſo; by bringing in with time the like form of commiſſion into the government of *Scotland*, as that glorious King *Edward* the third did plant this commiſſion here in this kingdom. And therefore you are not fit to be copies, except you be fair written without blots or blurs, or any thing unworthy your authority: And ſo I will trouble you no longer for this time.

THE SPEECH

USED BY

Sir *FRANCIS BACON*,

Lord-Keeper of the Great Seal of *England*, to Sir Will. Jones, upon his calling to be Lord Chief Juſtice of *Ireland*, 1617.

Sir William Jones,

THE King's moſt excellent Majeſty being duly informed of your ſufficiency every way, hath called you, by his writ now returned, to the ſtate and degree of a ſerjeant at law; but not to ſtay there, but being ſo qualified, to ſerve him as his chief juſtice of his King's bench in his realm of *Ireland*. And therefore that which I ſhall ſay to you, muſt be applied not to your ſerjeant's place (which you take but in paſſage) but to that great place where you are to ſettle; and becauſe I will not ſpend time to the delay of the buſineſs of cauſes of the court, I will lead you the ſhort journey by examples, and not the long by precepts.

The place that you ſhall now ſerve in, hath been fortunate to be well ſerved in four ſucceſſions before you: do but take unto you the conſtancy and integrity of Sir *Robert Gardiner*; the gravity, temper, and direction of Sir *James Lea*; the quickneſs, induſtry, and diſpatch of Sir *Humphry Winch*; the care and

and affection to the commonwealth, and the prudent and politic adminiſtration of Sir *John Denham*, and you ſhall need no other leſſons. They were all *Lincolns-Inn* men as you are, you have known them as well in their beginnings, as in their advancement.

But becauſe you are to be there not only chief juſtice, but a counſellor of eſtate, I will put you in mind of the great work now in hand, that you may raiſe your thoughts according unto it. *Ireland* is the laſt, *ex filiis Europae*, which hath been reclaimed from deſolation, and a deſart, (in many parts) to population and plantation; and from ſavage and barbarous cuſtoms, to humanity and civility. This is the King's work in chief: it is his garland of heroical virtue and felicity, denied to his progenitors, and reſerved to his times. The work is not yet conducted to perfection, but is in fair advance: and this I will ſay confidently, that if God bleſs this kingdom with peace and juſtice, no uſurer is ſo ſure in ſeventeen years ſpace to double his principal with intereſt, and intereſt upon intereſt, as that kingdom is within the ſame time to double the ſtock both of wealth and people. So as that kingdom which once within theſe twenty years, wiſe men were wont to doubt whether they ſhould wiſh it to be in a pool; is like now to become almoſt a garden, and younger ſiſter to *Great Britain*. And therefore you muſt ſet down with your ſelf to be not only a juſt governor, and a good chief juſtice (as if it were in *England*;) but under the King and the deputy you are to be a maſter builder, and a maſter planter, and reducer of *Ireland*. To which end, I will trouble you at this time but with three directions.

The firſt is, that you have ſpecial care of the three plantations. That of the north, which is in part acted; that of *Wexford*, which is now in diſtribution; and that of *Longford* and *Letrim*, which is now in ſurvey. And take this from me, that the bane of a plantation is, when the undertakers or planters make ſuch haſte to a little mechanical preſent profit as diſturbeth the whole frame and nobleneſs of the work for times to come. Therefore hold them to their covenants, and the ſtrict ordinances of plantation.

The ſecond is, that you be careful of the King's revenues, and by little and little conſtitute him a good demeſne, if it may be, which hitherto is little or none. For the King's caſe is hard, when every man's land ſhall be improved in value with increaſe manifold, and the King ſhall be tied to his dry rent.

My laſt direction (though firſt in weight) is that you do all good endeavours to proceed reſolutely and conſtantly (and yet with due temperance and equality) in matters of religion; leſt *Ireland* civil, become more dangerous to us than *Ireland* ſavage. So God give you comfort of your place.

After Sir *William Jones*'s ſpeech:

I had forgotten one thing, which was this. You may take exceeding great comfort, that you ſhall ſerve with ſuch a deputy; one that (I think) is a man ordain'd of God to do great good to that kingdom. And this I think good to ſay to you, that the true temper of a chief juſtice towards a deputy is neither ſervilely to ſecond him, nor factiouſly to oppoſe him.

THE

THE

LORD-KEEPER'S SPEECH

In the EXCHEQUER to Sir JOHN DENHAM, when he was called to be one of the Barons of the Exchequer.

SIR *John Denham*, the King of his grace and favour hath made choice of you to be one of the barons of the exchequer, to ſucceed to one of the graveſt and moſt reverend judges of this kingdom; for ſo I hold Baron *Altham* was. The King takes you not upon credit but proof, and great proof of your former ſervice; and that in both thoſe kinds wherein you are now to ſerve: for as you have ſhewed your ſelf a good judge between party and party, ſo you have ſhewed your ſelf a good adminiſter of the revenue, both when you were chief baron, and ſince as counſellor of eſtate there in *Ireland*, where the council as you know doth, in great part, manage and meſſuage the revenue.

AND to both theſe parts I will apply ſome admonitions, but not vulgar or diſcurſive, but apt for the times, and in few words, for they are beſt remembered.

FIRST, Therefore above all you ought to maintain the King's prerogative, and to ſet down with your ſelf, that the King's prerogative and the law are not two things; but the King's prerogative is law, and the principal part of the law; the firſt-born or *pars prima* of the law; and therefore in conſerving or maintaining that, you conſerve and maintain the law. There is not in the body of man one law of the head, and another of the body, but all is one entire law.

THE next point that I would now adviſe you is, that you acquaint your ſelf diligently with the revenue; and alſo with the ancient records and precedents of this court. When the famous caſe of the copper-mines was argued in this court, and judged for the King, it was not upon the fine reaſons of wit; as that the King's prerogative drew to it the chief *in quaque ſpecie:* the lion is the chief of beaſts, the eagle the chief of birds, the whale the chief of fiſhes, and ſo copper the chief of minerals; for theſe are but dalliances of law and ornaments: but it was the grave records and precedents that grounded the judgment of that cauſe; and therefore I would have you both guide and arm your ſelf with them againſt theſe vapours and fumes of law, which are extracted out of men's inventions and conceits.

THE third advice I will give you hath a large extent; it is that you do your endeavour in your place ſo to manage the King's juſtice and revenue, as the King may have moſt profit, and the ſubject leaſt vexation: for when there is much vexation to the ſubject, and little benefit to the King, then the exchequer is ſick: and when there is much benefit to the King, with leſs trouble and vexation to the ſubject, then the exchequer is ſound. As for example; if there ſhall be much racking for the King's old debts; and the more freſh and late debts ſhall be either more negligently called upon, or over-

eaſily diſcharged, or over indulgently ſtalled: or if the number of informations be many, and the King's part or fines for compoſitions a trifle; or if there be much ado to get the King new land upon concealments, and that which he hath already be not known and ſurveyed, nor the woods preſerved, (I could put you many other caſes) this falls within that which I term the ſick eſtate of the exchequer: and this is that which makes every man ready with their undertakings and their projects to diſturb the ancient frame of the exchequer, (than the which I am perſuaded there is not a better;) this being the burthen of the ſong: That much goeth out of the ſubject's purſe, and little cometh to the King's purſe. Therefore, give them not that advantage ſo to ſay. Sure I am, that beſides your own aſſociates, the barons, you ſerve with two ſuperior great officers, that have honourable and true ends, and deſire to ſerve the King and right the ſubject.

There reſteth, that I deliver you your patent.

His Lordship's

SPEECH

IN THE

COMMON-PLEAS,

To Juſtice *Hutton*, when he was called to be one of the Judges of the Common-Pleas.

Mr. Serjeant Hutton,

THE King's moſt excellent Majeſty being duly informed of your learning, integrity, diſcretion, experience, means, and reputation in your country, hath thought fit not to leave you theſe talents to be employed upon your ſelf only, but to call you to ſerve himſelf and his people in the place of one of his juſtices of the court of common-pleas.

This court where you are to ſerve is the local center and heart of the laws of this realm: Here the ſubject hath his aſſurance by fines and recoveries; here he hath his fixed and invariable remedies by *praecipes* and writs of right; here juſtice opens not by a by-gate of privilege, but by the great gate of the King's original writs out of the chancery. Here iſſues proceſs of out-lawry; if men will not anſwer law in this center of law, they ſhall be caſt out. And therefore it is proper for you, by all means with your wiſdom and fortitude, to maintain the laws of the realm: wherein nevertheleſs, I would not have you head-ſtrong but heart-ſtrong; and to weigh and remember with your ſelf that the twelve judges of the realm are as the twelve lions under *Solomon*'s throne: they muſt ſhew their ſtoutneſs in elevating and bearing up the throne, to repreſent unto you the lines and portraitures of a good judge.

The

THE firſt is, That you ſhould draw your learning out of your books, not out of your brain.

2. THAT you ſhould mix well the freedom of your own opinion with the reverence of the opinion of your fellows.

3. THAT you ſhould continue the ſtudying of your books, and not to ſpend on upon the old ſtock.

4. THAT you ſhould fear no man's face, and yet not turn ſtoutneſs into bravery.

5. THAT you ſhould be truly impartial, and not ſo as men may ſee affection through fine carriage.

6. THAT you ſhould be a light to jurors to open their eyes, but not a guide to lead them by the noſes.

7. THAT you affect not the opinion of pregnancy and expedition by an impatient and catching hearing of the counſellors at the bar.

8. THAT your ſpeech be with gravity, as one of the ſages of the law; and not talkative, nor with impertinent flying out to ſhew learning.

9. THAT your hands, and the hands of your hands (I mean thoſe about you) be clean, and uncorrupt from gifts, from meddling in titles, and from ſerving of turns, be they of great ones or ſmall ones.

10. THAT you contain the juriſdiction of the court within the ancient mere-ſtones, without removing the mark.

11. LASTLY, That you carry ſuch a hand over your miniſters and clerks, as that they may rather be in awe of you than preſume upon you.

THESE and the like points of the duty of a judge, I forbear to enlarge; for the longer I have lived with you, the ſhorter ſhall my ſpeech be to you; knowing that you come ſo furniſhed and prepared with theſe good virtues, as whatſoever I ſhall ſay cannot be new unto you; and therefore I will ſay no more unto you at this time, but deliver you your patent.

His LORDSHIP'S

SPEECH

IN THE

PARLIAMENT,

Being LORD CHANCELLOR, to the Speaker's excuſe.

Mr. Serjeant RICHARDSON,

THE King hath heard and obſerved your grave and decent ſpeech, tending to the excuſe and diſablement of your ſelf for the place of Speaker.

In anſwer whereof, his Majeſty hath commanded me to ſay to you, that he doth in no ſort admit of the ſame.

FIRST, Becauſe if the party's own judgment ſhould be admitted in caſe of elections, touching himſelf, it would follow, that the moſt confident and over-

weaning

weaning perſons would be received; and the moſt conſiderate men, and thoſe that underſtand themſelves beſt ſhould be rejected.

SECONDLY, His Majeſty doth ſo much rely upon the wiſdoms and diſcretions of thoſe of the houſe of commons, that have choſen you with an unanimous conſent, that his Majeſty thinks not good to ſwerve from their opinion in that wherein themſelves are principally intereſted.

THIRDLY, You have diſabled your ſelf in ſo good and decent a faſhion, as the manner of your ſpeech hath deſtroyed the matter of it.

AND therefore the King doth allow of the election, and admit you for Speaker.

To the Speaker's Oration.

Mr. Speaker,

THE King hath heard and obſerved your eloquent diſcourſe, containing much good matter and much good will: wherein you muſt expect from me ſuch an anſwer only as is pertinent to the occaſion, and compaſſed by due reſpect of time.

I MAY divide that which you have ſaid into four parts.

THE firſt was a commendation, or laudative of monarchy.

THE ſecond was indeed a large field, containing a thankful acknowledgment of his Majeſty's benefits, attributes, and acts of government.

THE third was ſome paſſages touching the inſtitution and uſe of parliaments.

THE fourth and laſt was certain petitions to his Majeſty on the behalf of the houſe and your ſelf.

FOR your commendation of monarchy, and preferring it before other eſtates, it needs no anſwer: The ſchools may diſpute it; but time hath tried it, and we find it to be the beſt. Other ſtates have curious frames ſoon put out of order; and they that are made fit to laſt, are not commonly fit to grow or ſpread: and contrariwiſe thoſe that are made fit to ſpread and enlarge, are not fit to continue and endure. But monarchy is like a work of nature, well compoſed both to grow and to continue. From this I paſs.

FOR the ſecond part of your ſpeech, wherein you did with no leſs truth than affection, acknowledge the great felicity which we enjoy by his Majeſty's reign and government, his Majeſty hath commanded me to ſay unto you, that praiſes and thankſgivings he knoweth to be the true oblations of hearts and loving affections: but that which you offer him he will join with you, in offering it up to God, who is the author of all good; who knoweth alſo the uprightneſs of his heart; who he hopeth will continue and encreaſe his bleſſings both upon himſelf and his poſterity, and likewiſe upon his kingdoms and the generations of them.

BUT I for my part muſt ſay unto you, as the *Grecian* orator ſaid long ſince in the like caſe: *Solus dignus harum rerum laudator tempus*; time is the only commender and encomiaſtick worthy of his Majeſty and his government.

WHY time? For that in the revolution of ſo many years and ages as have paſſed over this kingdom; notwithſtanding many noble and excellent effects were never produced until his Majeſty's days, but have been reſerved as proper and peculiar unto them.

AND becauſe this is no part of a panegyrick, but meerly ſtory, and that they be ſo many articles of honour fit to be recorded, I will only mention them, extracting part of them out of that you Mr. Speaker have ſaid: they be in number eight.

FIRST,

First, His Majeſty is the firſt (as you noted it well) that hath laid *lapis angularis*, the corner-ſtone of theſe two mighty kingdoms of *England* and *Scotland*, and taken away the wall of ſeparation: whereby his Majeſty is become the Monarch of the moſt puiſſant and military nations of the world; and if one of the ancient wiſe men was not deceived, iron commands gold.

Secondly, The plantation and reduction to civility of *Ireland* (the ſecond iſland of the ocean Atlantick) did by God's providence wait for his Majeſty's times; being a work reſembling indeed the works of the ancient heroes: No new piece of that kind in modern times.

Thirdly, This kingdom now firſt in his Majeſty's times hath gotten a lot or portion in the new world by the plantation of *Virginia* and the ſummer iſlands. And certainly it is with the kingdoms on earth as it is in the kingdom of heaven: Sometimes a grain of muſtard-ſeed proves a great Tree. Who can tell?

Fourthly, His Majeſty hath made that truth which was before titulary, in that he hath verified the ſtyle of defender of the faith: wherein his Majeſty's pen hath been ſo happy, as though the deaf adder will not hear, yet he is charmed that he doth not hiſs. I mean in the graver ſort of thoſe that have anſwered his Majeſty's writings.

Fifthly, It is moſt certain, that ſince the conqueſt, ye cannot aſſign twenty years, (which is the time that his Majeſty's reign now draws faſt upon) of inward and outward peace. Inſomuch, as the time of Queen *Elizabeth*, of happy memory, and always magnified for a peaceable reign, was nevertheleſs interrupted the firſt twenty years with a rebellion in *England*; and both firſt and laſt twenty years with rebellions in *Ireland*. And yet I know, that his Majeſty will make good both his words, as well that of *nemo me laceſſit impune*, as the other of *beati pacifici*.

Sixthly, That true and primitive office of Kings, which is to ſit in the gate and to judge the people, was never performed in like perfection by any of the King's progenitors: whereby his Majeſty hath ſhewed himſelf to be *lex loquens*, and to ſit upon the throne not as a dumb ſtatue, but as a ſpeaking oracle.

Seventhly, For his Majeſty's mercy (as you noted it well) ſhew me a time wherein a King of this realm hath reigned almoſt twenty years (as I ſaid) in his white robes without the blood of any peer of this kingdom: the axe turned once or twice towards a peer, but never ſtruck.

Lastly, The flouriſhing of arts and ſciences re-created by his Majeſty's countenance and bounty, was never in that height, eſpecially that art of arts divinity: for that we may truly to God's great glory confeſs, that ſince the primitive times, there were never ſo many ſtars (for ſo the ſcripture calleth them) in that firmament.

These things, Mr. Speaker, I have partly choſen out of your heap, and are ſo far from being vulgar, as they are in effect ſingular and proper to his Majeſty and his times. So that I have made good, as I take it, my firſt aſſertion; that the only worthy commender of his Majeſty is Time: which hath ſo ſet off his Majeſty's merits by the ſhadows of compariſon, as it paſſeth the luſtre or commendation of words.

How then ſhall I conclude? Shall I ſay, *O fortunatos nimium ſua ſi bona norint?* No, for I ſee ye are happy in enjoying them, and happy again in knowing them. But I will conclude this part with that ſaying, turned to the right hand: *Si gratum dixeris, omnia dixeris.* Your gratitude contains in a word all that I can ſay to you touching this parliament.

TOUCHING the third point of your ſpeech, concerning parliaments, I ſhall need to ſay little: for there was never that honour done to the inſtitution of parliament, that his Majeſty did it in his laſt ſpeech, making it in effect the perfection of monarchy; for that although monarchy was the more ancient, and be independent, yet by the advice and aſſiſtance of parliament it is the ſtronger and the ſurer built.

AND therefore I ſhall ſay no more of this point; but as you, Mr. Speaker, did well note, that when the King ſits in parliament, and his prelates, peers, and commons attend him, he is in the exaltation of his orb: ſo I wiſh things may be ſo carried, that he may be then in greateſt ſerenity and benignity of aſpect; ſhining upon his people both in glory and grace. Now you know well, that the ſhining of the ſun fair upon the ground, whereby all things exhilarate and do fructify, is either hindered by clouds above, or miſts below; perhaps by brambles and briars that grow upon the ground itſelf. All which I hope at this time will be diſpelled and removed.

I COME now to the laſt part of your ſpeech, concerning the petitions: but before I deliver his Majeſty's anſwer reſpectively in particular, I am to ſpeak unto you ſome few words in general; wherein, in effect, I ſhall but glean, his Majeſty having ſo excellently and fully expreſſed himſelf.

FOR that that can be ſpoken pertinently muſt be either touching the ſubject or matter of parliament buſineſs; or of the manner and carriage of the ſame; or laſtly of the time and the huſbanding and marſhalling of time.

FOR the matters to be handled in parliament, they are either of church, ſtate, laws, or grievances.

FOR the firſt two, concerning church or ſtate, ye have heard the King himſelf ſpeak; and as the ſcripture ſaith, *who is he that in ſuch things ſhall come after the King?* For the other two, I ſhall ſay ſomewhat, but very ſhortly.

FOR laws, they are things proper for your own element; and therefore therein ye are rather to lead than to be led. Only it is not amiſs to put you in mind of two things: the one, that you do not multiply or accumulate laws more than you need. There is a wiſe and learned *Civilian* that applies the curſe of the prophet, *Pluet ſuper eos laqueos*, to multiplicity of laws: for they do but enſnare and entangle the people. I wiſh rather, that ye ſhould either revive good laws that are fallen and diſcontinued, or provide againſt the ſlack execution of laws, which are already in force; or meet with the ſubtil evaſions from laws which time and craft hath undermined, than to make *novas creaturas legum*, laws upon a new mould.

THE other point, touching laws, is, that ye buſy not your ſelves too much in private bills, except it be in caſes wherein the help and arm of ordinary juſtice is too ſhort.

FOR grievances, his Majeſty hath with great grace and benignity opened himſelf. Nevertheleſs the limitations, which may make up your grievances not to beat the air only, but to ſort to a deſired effect, are principally two. The one, (to uſe his Majeſty's term) that ye do not hunt after grievances, ſuch as may ſeem rather to be ſtirred here when ye are met, than to have ſprung from the deſires of the country: ye are to repreſent the people; ye are not to perſonate them.

THE other, that ye do not heap up grievances as if numbers ſhould make a ſhew where the weight is ſmall; or as if all things amiſs (like *Plato*'s common-wealth) ſhould be remedied at once. It is certain, that the beſt governments, yea, and the beſt of men are like the beſt precious ſtones, wherein every

every flaw or icicle or grain are ſeen and noted more than in thoſe that are generally foul and corrupted.

THEREFORE contain your ſelves within that moderation as may appear to bend rather to the effectual eaſe of the people, than to a diſcurſive envy, or ſcandal upon the ſtate.

As for the manner of carriage of parliament buſineſs, ye muſt know, that ye deal with a King that hath been longer King than any of you have been parliament men; and a King that is no leſs ſenſible of forms than of matter; and is as far from induring diminution of Majeſty, as from regarding flattery or vain-glory; and a King that underſtandeth as well the pulſe of the hearts of people as his own orb. And therefore, both let your grievances have a decent and reverent form and ſtyle; and (to uſe the words of former parliaments) let them be *tanquam gemitus columbae*, without pique or harſhneſs: and on the other ſide, in that ye do for the King, let it have a mark of unity, alacrity and affection, which will be of this force; that whatſoever ye do in ſubſtance, will be doubled in reputation abroad, as in a cryſtal glaſs.

FOR the time, if ever parliament was to be meaſured by the hour-glaſs, it is this; in regard of the inſtant occaſion flying away irrecoverably. Therefore let your ſpeeches in the houſe be the ſpeeches of counſellors, and not of orators: let your committees tend to diſpatch, not to diſpute; and ſo marſhal the times as the publick buſineſs, eſpecially the proper buſineſs of the parliament be put firſt, and private bills be put laſt, as time ſhall give leave, or within the ſpaces of the publick.

FOR the four petitions, his Majeſty is pleaſed to grant them all as liberally as the ancient and true cuſtom of parliament doth warrant, and with the cautions that have ever gone with them; that is to ſay, That the privilege be not uſed for defrauding of creditors and defeating of ordinary juſtice: That liberty of ſpeech turn not into licence, but be joined with that gravity and diſcretion, as may taſte of duty and love to your ſovereign, reverence to your own aſſembly, and reſpect to the matters ye handle: That your acceſſes be at ſuch fit times, as may ſtand beſt with his Majeſty's pleaſure and occaſions: That miſtakings and miſunderſtandings be rather avoided and prevented (as much as may be) than ſalved or cleared.

CHARGES.

The JUDICIAL CHARGE of Sir *FRANCIS BACON*, Kt.

The King's Sollicitor, upon the commiſſion of Oyer and Determiner held for the verge of the court *.

Lex vitiorum emendatrix, virtutum commendatrix eſt.

YOU are to know and conſider well, the duty and ſervice to which you are called, and whereupon you are by your oath charged. It is the happy eſtate and condition of the ſubject of this realm of *England*, that he is not to be impeached in his life, lands, or goods, by flying rumours or wandring fames and reports, or ſecret and privy inquiſitions; but by the oath and preſentment of men of honeſt condition, in the face of juſtice. But this happy eſtate of the ſubject, will turn to hurt and inconvenience, if thoſe that hold that part which you are now to perform, ſhall be negligent and remiſs in doing their duty; for as of two evils it were better men's doings were looked into over-ſtrictly and ſeverely, than that there ſhould be a notorious impunity of malefactors; as was well and wiſely ſaid of ancient time, *a man were better live where nothing is lawful, than where all things are lawful.* This therefore reſts in your care and conſcience, foraſmuch as at you juſtice begins, and the law cannot purſue and chaſe offenders to their deſerved fall, except you firſt put them up and diſcover them, whereby they may be brought to anſwer; for your verdict is not concluding to condemn, but it is neceſſary to charge, and without it the court cannot proceed to condemn.

CONSIDERING therefore that ye are the eye of juſtice, ye ought to be ſingle without partial affection; watchful, not aſleep, or falſe aſleep in winking at offenders, and ſharp-ſighted to proceed with underſtanding and diſcretion: for in a word, if you ſhall not preſent unto the court all ſuch offences, as ſhall appear unto you either by evidence given in, or otherwiſe (mark what I ſay) of your own knowledge, which have been committed within the verge, which is as it were the limits of your ſurvey, but ſhall ſmother and conceal any offence willingly, then the guiltineſs of others will cleave to your conſciences, before God; and beſides, you are anſwerable in ſome degree to the King and his law, for ſuch your default and ſuppreſſion; and therefore take good regard unto it, you are to ſerve the King and his people, you are to keep and obſerve your oath, you are to acquit your ſelves.

BUT there is yet more cauſe why you ſhould take more eſpecial regard to your preſentments, than any other grand juries, within the counties of this kingdom at large: for as it is a nearer degree and approach unto the King, which is the fountain of juſtice and government, to be the King's ſervant, than to be the King's ſubject; ſo this commiſſion ordained for the King's ſervants and houſhold, ought in the execution of juſtice to be exemplary unto other places. *David* ſaith (who was a King) *The wicked man ſhall not abide in my houſe*;

* Several times incorrectly printed, without the proper title, now amended by the original.

houſe; as taking knowledge that it was impoſſible for Kings to extend their care, to baniſh wickedneſs over all their land or empire; but yet at leaſt they ought to undertake to God for their houſe.

We ſee further, that the law doth ſo eſteem the dignity of the King's ſettled manſion-houſe, as it hath laid unto it a plot of twelves mile round, which we call the verge, to be ſubject to a ſpecial and exempted juriſdiction depending upon his perſon and great officers. This is as a half pace, or carpet ſpread about the King's chair of eſtate, which therefore ought to be cleared and voided more than other places of the kingdom; for if offences ſhall be ſhrouded under the King's wings, what hope is there of diſcipline and good juſtice in more remote parts? We ſee the ſun, when it is at the brighteſt, there may be perhaps a bank of clouds in the north or the weſt, or remote regions, but near his body few or none; for where the King cometh, there ſhould come peace and order, and an awe and reverence in men's hearts.

And this juriſdiction was in ancient time executed, and ſince by ſtatute ratified by the lord ſteward with great ceremony, in the nature of a peculiar King's bench for the verge; for it was thought a kind of eclipſing to the King's honour, that where the King was, any juſtice ſhould be ſought but immediately from his own officers. But in reſpect that office was oft void, this commiſſion hath ſucceeded, which change I do not diſlike, for though it hath leſs ſtate, yet it hath more ſtrength legally; therefore I ſay, you that are a jury of the verge, ſhould lead and give a pattern unto others in the care and conſcience of your preſentments. Articuli ſuper Chartas c. 3 13 *R.* 2. c. 3. 33 *H.* 8. c. 12.

Concerning the particular points and articles whereof you ſhall enquire, I will help your memory and mine own with order; neither will I load you, or trouble my ſelf with every branch of ſeveral offences, but ſtand upon thoſe that are principal and moſt in uſe: the offences therefore that you are to preſent are of four natures.

1. The firſt, ſuch as concern God and his church.
2. The ſecond, ſuch as concern the King and his ſtate.
3. The third, ſuch as concern the King's people, and are capital.
4. The fourth, ſuch as concern the King's people, not capital.

The ſervice of almighty God, upon whoſe bleſſing the peace, ſafety, and good eſtate of King and kingdom doth depend, may be violated, and God diſhonoured in three manners, by profanation, by contempt, and by diviſion, or breach of unity. God and his Church.

First, If any man hath depraved or abuſed in word or deed the bleſſed Sacrament, or diſturbed the preacher or congregation in the time of divine ſervice; or if any have maliciouſly ſtricken with weapon, or drawn weapon in any church or church-yard; or if any fair or market have been kept in any church-yard, theſe are profanations within the purview of ſeveral ſtatutes, and thoſe you are to preſent: for holy things, actions, times, and ſacred places, are to be preſerved in reverence and divine reſpect. Profanations. 1 *E.* 6. c. 1. & 1 *El.* c. 2. 1 *M.* c. 3. 5 *E.* 6. c. 4. 13 *E.* 1. Stat. of *Winton.*

For contempts of our church and ſervice, they are comprehended in that known name, which too many (if it pleaſed God) bear, recuſancy; which offence hath many branches and dependencies: the wife-recuſant, ſhe tempts; the church-papiſt, he feeds and relieves; the corrupt ſchoolmaſter, he ſoweth tares; the diſſembler, he conformeth and doth not communicate. Therefore if any perſon, man or woman, wife or ſole, above the age of ſixteen years, not having ſome lawful excuſe, have not repaired to church according to the ſeveral ſtatutes; the one, for the weekly, the other, for the monthly repair, you are to preſent both the offence and the time how long. Again, ſuch as maintain, relieve, keep in ſervice of livery recuſants, though themſelves be none; Contempts, *viz.* Recuſancy.

none, you are likewiſe to preſent; for theſe be like the roots of nettles, which ſting not themſelves, but bear and maintain the ſtinging leaves: ſo of any that keepeth a ſchoolmaſter that comes not to church, or is not allowed by the biſhop, for that infection may ſpread far: ſo ſuch recuſants as have been convicted and conform'd, and have not received the ſacrament once a year, for that is the touch-ſtone of their true converſion: and of theſe offences of recuſancy take you ſpecial regard. Twelve miles from court is no region for ſuch ſubjects. In the name of God, why ſhould not twelve miles about the King's chair be as free from papiſt-recuſants, as twelve miles from the city of *Rome* (the Pope's chair) is from proteſtants? There be hypocrites and atheiſts, and ſo I fear there be amongſt us; but no open contempt of their religion is endured. If there muſt be recuſants, it were better they lurked in the country, than here in the boſom of the kingdom.

Breach of unity.

FOR matter of diviſion and breach of unity, it is not without a myſtery that Chriſt's coat had no ſeam, nor no more ſhould the church if it were poſſible. Therefore if any miniſter refuſe to uſe the book of common-prayer, or wilfully ſwerveth in divine ſervice from that book; or if any perſon whatſoever do ſcandalize that book, and ſpeak openly and maliciouſly in derogation of it; ſuch men do but make a rent in the garment, and ſuch are by you to be enquired of. But much more, ſuch as are not only differing, but in a ſort oppoſite unto it, by uſing a ſuperſtitious and corrupted form of divine ſervice; I mean, ſuch as ſay or hear maſs.

THESE offences which I have recited to you, are againſt the ſervice and worſhip of God: there remain two which likewiſe pertain to the diſhonour of God; the one, is the abuſe of his name by perjury; the other, is the adhering to God's declared enemies, evil and out-caſt ſpirits, by conjuration and witchcraft.

Perjury.

FOR perjury, it is hard to ſay whether it be more odious to God, or pernicious to man; for an oath, ſaith the apoſtle, is the end of controverſies: if therefore that boundary of ſuits be taken away or miſ-ſet, where ſhall be the end? Therefore you are to enquire of wilful and corrupt perjury in any of the King's courts, yea of court-barons and the like, and that as well of the actors, as of the procurer and ſuborner.

Conjuration and witchcraft.

1 *Jac. cap.* 1, 2.

FOR witchcraft, by the former law it was not death, except it were actual and groſs invocation of evil ſpirits, or making covenant with them, or taking away life by witchcraft: but now by an act in his Majeſty's times, charms and ſorceries in certain caſes of procuring of unlawful love or bodily hurt, and ſome others, are made felony the ſecond offence; the firſt being impriſonment and pillory.

Supremacy placed with offences of ſtate.

AND here I do conclude my firſt part concerning religion and eccleſiaſtical cauſes; wherein it may be thought that I do forget matters of ſupremacy, or of Jeſuits, and ſeminaries, and the like, which are uſually ſorted with cauſes of religion: but I muſt have leave to direct my ſelf according to mine own perſuaſion, which is, that whatſoever hath been ſaid or written on the other ſide, all the late ſtatutes which inflict capital puniſhment upon extollers of the Pope's ſupremacy; denyers of the King's ſupremacy, Jeſuits and ſeminaries, and other offenders of that nature, have for their principal ſcope, not the puniſhment of the error of conſcience, but the repreſſing of the peril of the eſtate. This is the true ſpirit of theſe laws, and therefore I will place them under my ſecond diviſion, which is of offences that concern the King and his eſtate, to which now I come.

The King and the ſtate.

The King's perſon.

THESE offences therefore reſpect either the ſafety of the King's perſon, or the ſafety of his eſtate and kingdom, which though they cannot be diſſever'd in deed, yet they may be diſtinguiſhed in ſpeech. Firſt then, if any have conſpired

conſpired againſt the life of the King, which God have in his cuſtody, or of the Queen's Majeſty, or of the moſt noble Prince their eldeſt ſon; the very compaſſing and inward imagination thereof is high treaſon, if it can be proved by any fact that is overt: for in the caſe of ſo ſudden, dark, and pernicious, and peremptory attempts, it were too late for the law to take a blow before it gives, and this high treaſon of all other is moſt heinous, of which you ſhall enquire, though I hope there be no cauſe.

Privy council.

THERE is another capital offence that hath an affinity with this, whereof you here within the verge are moſt properly to enquire; the King's privy council are as the principal watch over the ſafety of the King, ſo as their ſafety is a portion of his: if therefore any of the King's ſervants within his cheque-roll (for to them only the law extends) have conſpired the death of any the King's privy council, this is felony, and thereof you ſhall enquire.

Repreſentation of his perſon.

AND ſince we are now in that branch of the King's perſon, I will ſpeak alſo of the King's perſon by repreſentation, and the treaſons which touch the ſame.

THE King's perſon and authority is repreſented in three things; in his ſeals, in his monies, and in his principal magiſtrates: if therefore any have counterfeited the King's great ſeal, privy ſeal, or ſeal manual; or counterfeited, clipped, or ſcaled his monies, or other monies current, this is high treaſon; ſo is it to kill certain great officers, or judges executing their office.

The eſtate.

WE will paſs now to thoſe treaſons which concern the ſafety of the King's eſtate, which are of three kinds anſwering to three perils which may happen to an eſtate; theſe perils are foreign invaſion, open rebellion, and ſedition, and privy practice, to alienate and eſtrange the hearts of the ſubjects, and to prepare them either to adhere to enemies, or to burſt out into tumults and commotions of themſelves.

Invaſion and rebellion.

THEREFORE if any perſon have ſolicited or procured any invaſion from foreigners; or if any have combined to raiſe and ſtir the people to rebellion within the realm; theſe are high treaſons, tending to the overthrow of the eſtate of this commonwealth, and to be enquired of.

Alienation of hearts.

THE third part of practice hath divers branches, but one principal root in theſe our times, which is the vaſt and over-ſpreading ambition and uſurpation of the ſee of *Rome:* for the Pope of *Rome* is, according to his late challenges and pretences, become a competitor and corrival with the King, for the hearts and obediences of the King's ſubjects: He ſtands for it, he ſends over his love-tokens and brokers (under colour of conſcience) to ſteal and win away the hearts and allegiances of the people, and to make them as fuel ready to take fire upon any his commandments. This is that yoke which this kingdom hath happily caſt off, even at ſuch time when the popiſh religion was nevertheleſs continued, and that divers ſtates, which are the Pope's vaſſals, do likewiſe begin to ſhake off.

Supremacy, treaſon, &c. 5 *Eliz. cap.* 1. Jeſuits. 3 *Jac. cap.* 4. & 5.

IF therefore any perſon have maintained and extolled the uſurped authority of the biſhop of *Rome* within the King's dominions, by writing, preaching, or deed adviſedly, directly and maliciouſly; or if any perſon have publiſhed or put in ure any of the Pope's bulls or inſtruments of abſolution; or if any perſon have withdrawn and reconciled any of the King's ſubjects from their obedience, or been withdrawn and reconciled; or if any ſubject have refuſed the ſecond time to take the oath of ſupremacy lawfully tendred; or if any Jeſuit or ſeminary come and abide within this realm; theſe are by ſeveral ſtatutes made caſes of high treaſon, the law accounting theſe things as preparatives, and the firſt wheels and ſecret motions of ſeditions and revolts from the King's obedience. Of theſe you are to enquire both of the actors and of their abettors, comforters, receivers, maintainers; and concealers, which in ſome caſes are traitors,

28 *El. cap.* 1. 13 *El. cap.* 2. 23 *El. cap.* 1.

traitors, as well as the principal, in ſome caſes in *praemunire*, in ſome other, in miſpriſion of treaſon, (which I will not ſtand to diſtinguiſh) and in ſome other, felony; as namely, that of the receiving and relieving of jeſuits and
Agnus Dei's. prieſts, the bringing in and diſperſing of *agnus Dei's*; croſſes, pictures, or ſuch traſh, is likewiſe *praemunire*; and ſo is the denial to take the oath of ſupremacy the firſt time.

Military men. And becauſe in the diſpoſition of a ſtate to troubles and perturbations, military men are moſt tickle and dangerous; therefore if any of the King's ſubjects go over to ſerve in foreign parts, and do not firſt endure the touch, that is, take the oath of allegiance; or if he have born office in any army, and do not enter into bond with ſureties as is preſcribed, this is made felony; and ſuch as you ſhall enquire.

Prophecies. Lastly, becauſe the vulgar people are ſometimes led with vain and fond prophecies; if any ſuch ſhall be publiſhed, to the end to move ſtirs or tumults, this is not felony, but puniſhed by a year's impriſonment and loſs of goods: and of this alſo ſhall you enquire.

You ſhall likewiſe underſtand that the eſcape of any priſoner committed for treaſon, is treaſon; whereof you are likewiſe to enquire.

The people capital. Now come I to the third part of my diviſion; that is, thoſe offences which concern the King's people, and are capital; which nevertheleſs the law terms offences againſt the crown, in reſpect of the protection that the King hath of his people, and the intereſt he hath in them and their welfare; for touch them, touch the King. Theſe offences are of three natures: the firſt concerneth the conſervation of their lives; the ſecond, of honour and honeſty of their perſons and families; and the third, of their ſubſtance.

Life. First for life. I muſt ſay unto you in general, that life is grown too cheap in theſe times, it is ſet at the price of words, and every petty ſcorn and diſgrace can have no other reparation; nay ſo many men's lives are taken away with impunity, that the very life of the law is almoſt taken away, which is the execution; and therefore though we cannot reſtore the life of thoſe men that are ſlain, yet I pray let us reſtore the law to her life, by proceeding with due ſeverity againſt the offenders; and moſt eſpecially this plot of ground, (which as I ſaid is the King's carpet) ought not to be ſtained with blood, crying in the ears of God and the King. It is true nevertheleſs, that the law doth make divers juſt differences of life taken away; but yet no ſuch differences as the wanton humours and braveries of men have under a reverend name of honour and reputation invented.

The higheſt degree is where ſuch a one is killed, unto whom the offender did bear faith and obedience; as the ſervant to the maſter, the wife to the huſband, the clerk to the prelate; and I ſhall ever add, (for ſo I conceive of the law) the child to the father or the mother; and this the law terms petty treaſon.

The ſecond is, Where a man is ſlain upon fore-thought malice, which the law terms murther; and it is an offence horrible and odious, and cannot be blanched, nor made fair, but foul.

The third is, Where a man is killed upon a ſudden heat or affray, where-
1 *Jac. cap.* 8. unto the law gives ſome little favour, becauſe a man in fury is not himſelf, *ira furor brevis*, wrath is a ſhort madneſs; and the wiſdom of law in his Majeſty's time hath made a ſub-diviſion of the ſtab given, where the party ſtabbed is out of defence, and had not given the firſt blow, from other manſlaughters.

The fourth degree is, That of killing a man in the party's own defence, or by miſadventure, which though they be not felonies, yet nevertheleſs the law doth not ſuffer them to go unpuniſhed; becauſe it doth diſcern ſome ſparks of a bloody mind in the one, and of careleſſneſs in the other.

And

And the fifth is, where the law doth admit a kind of juſtification, not by plea, for a man may not (that hath ſhed blood) affront the law with pleading not guilty, but when the caſe is found by verdict, being diſcloſed upon the evidence; as where a man in the King's highway and peace is aſſailed to be murthered or robbed; or when a man defending his houſe, which is his caſtle, againſt unlawful violence: or when a ſheriff or miniſter of juſtice is reſiſted in the execution of his office; or when the patient dieth in the chirurgeon's hands, upon cutting or otherwiſe; for theſe caſes the law doth privilege, becauſe of the neceſſity, and becauſe of the innocency of the intention.

Thus much for the death of man, of which caſes you are to enquire; together with the acceſſories before and after the fact.

For the ſecond kind, which concerns the honour and chaſtneſs of perſons and families; you are to enquire of the raviſhment of women, of the taking of women out of the poſſeſſion of their parents or guardians againſt their will, or marrying them, or abuſing them; of double marriages, where there was not firſt ſeven years abſence, and no notice that the party ſo abſent was alive, and other felonies againſt the honeſty of life. Honeſty of life. 1 *Jac. cap.* 11.

For the third kind, which concerneth men's ſubſtance, you ſhall enquire of burglaries, robberies, cutting of purſes, and taking of any thing from the perſon; and generally other ſtealths, as well ſuch as are plain as thoſe that are diſguiſed, whereof I will by and by ſpeak: But firſt I muſt require you to uſe diligence in preſenting eſpecially thoſe purloinings and imbezlements, which are of plate, veſſel, or whatſoever within the King's houſe. The King's houſe is an open place; it ought to be kept ſafe by law, and not by lock, and therefore needeth the more ſeverity. Subſtance.

Now for coloured and diſguiſed robberies; I will name two or three of them: the purveyor that takes without warrant, is no better than a thief, and it is felony. The ſervant that hath the keeping of his Majeſty's goods, and going away with them, though he came to the poſſeſſion of them lawfully, it is felony. Of theſe you ſhall likewiſe enquire, principals and acceſſories. The voluntary eſcape of a felon is alſo felony. 28 *E.* 1. *Articuli ſuper chartas, c.* 2. 31 *El. c.* 4. 33 *H.* 6. *c.* 1. 21 *H.* 8. *c.* 7.

For the laſt part, which is of offences concerning the people not capital, they are many: but I will ſelect only ſuch as I think fitteſt to be remembered unto you, ſtill dividing to give you the better light. They are of four natures. The people not capital.

1. The firſt, is matter of force and outrage.

2. The ſecond, matter of fraud and deceit.

3. Publick nuſances and grievances.

4. The fourth, breach and inobſervance of certain wholeſome and politick laws for government.

For the firſt, you ſhall enquire of riots and unlawful aſſemblies, of forcible entries, and detainers with force; and properly of all aſſaults of ſtriking, drawing weapon or other violence within the King's houſe, and the precincts thereof: for the King's houſe, from whence example of peace ſhould flow unto the fartheſt parts of the kingdom, as the ointment of *Aaron*'s head to the ſkirts of his garment, ought to be ſacred and inviolate from force and brawls, as well in reſpect of reverence to the place, as in reſpect of danger of greater tumult, and of ill example to the whole kingdom; and therefore in that place all ſhould be full of peace, order, regard, forbearance, and ſilence. Force.

Beſides open force, there is a kind of force that cometh with an armed hand, but diſguiſed, that is no leſs hateful and hurtful; and that is, abuſe and oppreſſion by authority. And therefore you ſhall enquire of all extortions

in officers and miniſters; as ſheriffs, bailiffs of hundreds, eſcheators, coroners, conſtables, ordinaries, and others, who by colour of office do poll the people.

For frauds and deceits, I do chiefly commend to your care the frauds and deceits in that which is the chief means of all juſt contract and permutation, which is, weights and meaſures; wherein, although God hath pronounced that a falſe weight is an abomination, yet the abuſe is ſo common and ſo general, I mean of weights, (and I ſpeak upon knowledge and late examination) that if one were to build a church, he ſhould need but falſe weights, and not ſeek them far, of the piles of braſs to make the bells, and the weights of lead to make the battlements: and herein you are to make ſpecial enquiry, whether the clerk of the market within the verge, to whom properly it appertains, hath done his duty.

Nuſance. For nuſances and grievances, I will for the preſent only ſingle out one, that ye preſent the decays of highways and bridges; for where the Majeſty of a King's houſe draws recourſe and acceſs, it is both diſgraceful to the King, and diſeaſeful to the people, if the ways near-abouts be not fair and good; wherein it is ſtrange to ſee the chargeable pavements and cauſways in the avenues and entrances of towns abroad beyond the ſeas; whereas *London*, the ſecond city at the leaſt of *Europe*, in glory, in greatneſs, and in wealth, cannot be diſcerned by the fairneſs of the ways, though a little perhaps by the broadneſs of them from a village.

Breach of ſtatutes. For the laſt part, (becauſe I paſs theſe things over briefly) I will make mention unto you of three laws.

1. The one, concerning the King's pleaſure.
2. The ſecond, concerning the people's food.
3. And the third, concerning wares and manufactures.

King's pleaſure. You ſhall therefore enquire of the unlawful taking partridges and pheaſants or fowl, the deſtruction of the eggs of the wild-fowl, the killing of hares or deer, and the ſelling of veniſon or hares: for that which is for exerciſe and ſport and courteſy ſhould not be turned to gluttony and ſale victual.

Food. You ſhall alſo enquire whether bakers and brewers keep their aſſize, and whether as well they as butchers, inn-holders and victuallers, do ſell that which is wholeſome, and at reaſonable prices, and whether they do link and combine to raiſe prices.

Manufactures. Lastly, you ſhall enquire whether the good ſtatute be obſerved, whereby a man may have that he thinketh he hath, and not be abuſed or miſ-ſerved in that he buys: I mean that ſtatute that requireth that none uſe any manual occupation but ſuch as have been ſeven years apprentice to it; which law being generally tranſgreſſed, makes the people buy in effect chaff for corn; for that which is miſ-wrought will miſ-wear.

5 *Eliz. cap.* 4.

There be many more things inquirable by you throughout all the former parts, which it were over-long in particular to recite. You may be ſupplied either out of your own experience, or out of ſuch bills and informations as ſhall be brought unto you, or upon any queſtion that you ſhall demand of the court, which will be ready to give you any farther direction as far as is fit: but theſe which I have gone through, are the principal points of your charge; which to preſent, you have taken the name of God to witneſs; and in the name of God perform it.

A

A

CHARGE

Delivered by

Sir *FRANCIS BACON*, Kt.

The KING's Attorney-General,

At the ARRAIGNMENT of the Lord *Sanquhar* in the *King's-Bench* at *Weſtminſter*.

The ARGUMENT.

The Lord Sanquhar *a* Scotch *nobleman, having in private revenge ſuborned* Robert Carlile, *to murther* John Turner, *maſter of fence, thought by his greatneſs to have born it out; but the King reſpecting nothing ſo much as juſtice, would not ſuffer nobility to be a ſhelter for villany; but, according to law, on the* 29th *of* June 1612, *the ſaid Lord* Sanquhar, *having been arraigned and condemned by the name of* Robert Creighton *Eſq; was before* Weſtminſter-hall-gate *executed, where he died very penitent. At whoſe arraignment my Lord* Bacon (*then Attorney-general to King* James) *made this ſpeech following:*

IN this cauſe of life and death, the Jury's part is in effect diſcharged; for after a frank and formal confeſſion, their labour is at an end: ſo that what hath been ſaid by Mr. Attorney, or ſhall be ſaid by my ſelf, is rather convenient than neceſſary.

MY Lord *Sanquhar*, your fault is great, and cannot be extenuated, and it need not be aggravated; and if it needed, you have made ſo full an anatomy of it out of your own feeling, as it cannot be matched by my ſelf, or any man elſe, out of conceit; ſo as that part of aggravation I leave. Nay, more, this chriſtian and penitent courſe of yours draws me thus far, that I will agree, in ſome ſort extenuates it: for certainly, as even in extreme evils there are degrees; ſo this particular of your offence is ſuch, as though it be foul ſpilling of blood, yet there are more foul: for if you had ſought to take away a man's life for his vineyard, as *Achab* did; or for envy, as *Cain* did; or to poſſeſs his bed, as *David* did; ſurely the murther had been more odious.

YOUR temptation was revenge, which the more natural it is to man, the more have laws both divine and humane ſought to repreſs it; *mihi vindicta.*

But

But in one thing you and I ſhall never agree, that generous ſpirits (you ſay) are hard to forgive: no, contrariwiſe, generous and magnanimous minds are readieſt to forgive; and it is a weakneſs and impotency of mind to be unable to forgive; *Corpora magnanimo ſatis eſt proſtraſſe leoni.*

But howſoever murthers may ariſe from ſeveral motives, leſs or more odious, yet the law both of God and man involves them in one degree, and therefore you may read that in *Joab*'s caſe, which was a murther upon revenge, and matcheth with your caſe; he for a dear brother, and you for a dear part of your own body; yet there was a ſevere charge given, it ſhould not be unpuniſhed.

And certainly the circumſtance of time is heavy upon you: it is now five years ſince this unfortunate man *Turner*, be it upon accident, or be it upon deſpight, gave the provocation, which was the ſeed of your malice. All paſſions are aſſuaged with time, love, hatred, grief; all fire it ſelf burns out with time, if no new fewel be put to it. Therefore for you to have been in the gall of bitterneſs ſo long, and to have been in a reſtleſs chaſe of this blood ſo many years, is a ſtrange example; and I muſt tell you plainly, that I conceive you have ſucked thoſe affections of dwelling in malice, rather out of *Italy*, and outlandiſh manners, where you have converſed, than out of any part of this iſland, *England* or *Scotland*.

But that which is fitteſt for me to ſpend time in (the matter being confeſſed) is to ſet forth and magnify to the hearers the juſtice of this day; firſt of God, and then of the King.

My Lord, you have friends and entertainments in foreign parts; it had been an eaſy thing for you to ſet *Carlile*, or ſome other bloodhound on work, when your perſon had been beyond the ſeas; and ſo this news might have come to you in a packet, and you might have looked on how the ſtorm would paſs, but God bereaved you of this foreſight, and cloſed you here under the hand of a King, that though abundant in clemency, yet is no leſs zealous of juſtice.

Again, when you came in at *Lambeth*, you might have perſiſted in the denial of the procurement of the fact; *Carlile*, a reſolute man, might perhaps have cleared you (for they that are reſolute in miſchief, are commonly obſtinate in concealing the procurers) and ſo nothing ſhould have been againſt you but preſumption. But then alſo God, to take away all obſtruction of juſtice, gave you the grace (which ought indeed to be more true comfort to you than any device whereby you might have eſcaped) to make a clear and plain confeſſion.

Other impediments there were (not a few) which might have been an interruption to this day's juſtice, had not God in his providence removed them.

But now that I have given God the honour, let me give it likewiſe where it is next due, which is to the King our ſovereign.

This murther was no ſooner committed and brought to his Majeſty's ears, but his juſt indignation wherewith he firſt was moved, caſt it ſelf into a great deal of care and providence to have juſtice done. Firſt came forth his proclamation ſomewhat of a rare form, and deviſed, and in effect dictated by his Majeſty himſelf; and by that he did proſecute the offenders, as it were with the breath and blaſt of his mouth. Then did his Majeſty ſtretch forth his long arms (for Kings have long arms when they will extend them) one of them to the ſea, where he took hold of *Grey* ſhipped for *Sweden*, who gave the firſt light of teſtimony; the other arm to *Scotland*, and took hold of *Carlile*, ere he was warm in his houſe, and brought him the length of his kingdom under ſuch ſafe watch and cuſtody, as he could have no means to eſcape,

no

no nor to miſchief himſelf, no nor learn any leſſons to ſtand mute; in which caſes perhaps, this day's juſtice might have received a ſtop. So that I may conclude his Majeſty hath ſhewed himſelf God's true lieutenant, and that he is no reſpecter of perſons; but the *Engliſh*, *Scotiſh*, nobleman, fencer, are to him alike in reſpect of juſtice.

NAY, I muſt ſay farther, that his Majeſty hath had, in this, a kind of prophetical ſpirit; for what time *Carlile* and *Grey*, and you, my lord your ſelf, were fled no man knew whither, to the four winds, the King ever ſpake in a confident and undertaking manner, that whereſoever the offenders were in *Europe*, he would produce them forth to juſtice; of which noble word, God hath made him maſter.

LASTLY, I will conclude towards you, my lord, that though your offence hath been great, yet your confeſſion hath been free, and your behaviour and ſpeech full of diſcretion; and this ſhews, that though you could not reſiſt the tempter, yet you bear a *Chriſtian* and generous mind, anſwerable to the noble family of which you are deſcended. This I commend unto you, and take it to be an aſſured token of God's mercy and favour, in reſpect whereof all worldly things are but traſh; and ſo it is fit for you, as your ſtate now is, to account them. And this is all I will ſay for the preſent.

N. B. THE reader for his fuller information in this ſtory of the Lord *Sanquhar* is deſired to peruſe the caſe in the ninth book of the Lord *Coke*'s reports; at the end of which, the whole ſeries of the murder and trial is exactly related.

THE

CHARGE

OF

Sir *FRANCIS BACON*, Kt.

His MAJESTY's Attorney-General,

Touching

DUELS.

Upon an Information in the STAR-CHAMBER againſt *Prieſt* and *Wright*.

With the Decree of the STAR-CHAMBER in the ſame Cauſe.

MY LORDS,

I THOUGHT it fit for my place, and for theſe times, to bring to hearing before your lordſhips ſome cauſe touching private duels, to ſee if this court can do any good to tame and reclaim that evil which ſeems unbridled. And I could have wiſhed that I had met with ſome greater perſons, as a ſubject for your cenſure, both becauſe it had been more worthy of this preſence;

and alſo the better to have ſhewed the reſolution my ſelf hath to proceed without reſpect of perſons in this buſineſs: but finding this cauſe on foot in my predeceſſor's time, and publiſhed and ready for hearing, I thought to loſe no time in a miſchief that groweth every day; and beſides, it paſſes not amiſs ſometimes in government, that the greater ſort be admoniſhed by an example made in the meaner, and the dog to be beaten before the lion. Nay, I ſhould think, my lords, that men of birth and quality will leave the practice when it begins to be vilified, and come ſo low as to barber-ſurgeons and butchers, and ſuch baſe mechanical perſons.

And for the greatneſs of this preſence, in which I take much comfort, both as I conſider it in itſelf, and much more in reſpect it is by his Majeſty's direction, I will ſupply the meanneſs of the particular cauſe by handling of the general point: to the end, that by occaſion of this preſent cauſe, both my purpoſe of proſecution againſt duels, and the opinion of the court, (without which I am nothing) for the cenſure of them may appear, and thereby offenders in that kind may read their own caſe, and know what they are to expect; which may ſerve for a warning until example may be made in ſome greater perſon: which I doubt the times will but too ſoon afford.

Therefore before I come to the particular, whereof your lordſhips are now to judge, I think it time beſt ſpent to ſpeak ſomewhat:

First, Of the nature and greatneſs of this miſchief.

Secondly, Of the cauſes and remedies.

Thirdly, Of the juſtice of the law of *England*; which ſome ſtick not to think defective in this matter.

Fourthly, Of the capacity of this court, where certainly the remedy of this miſchief is beſt to be found.

And fifthly, touching mine own purpoſe and reſolution, wherein I ſhall humbly crave your lordſhips aid and aſſiſtance.

For the miſchief itſelf, it may pleaſe your lordſhips to take into your conſideration that when revenge is once extorted out of the magiſtrates hands, contrary to God's ordinance, *mihi vindicta, ego retribuam*, and every man ſhall bear the ſword, not to defend, but to aſſail; and private men begin once to preſume to give law to themſelves, and to right their own wrongs, no man can foreſee the dangers and inconveniences that may ariſe and multiply thereupon. It may cauſe ſudden ſtorms in court, to the diſturbance of his Majeſty, and unſafety of his perſon: It may grow from quarrels to bandying, and from bandying to trooping, and ſo to tumult and commotion; from particular perſons to diſſenſion of families and alliances; yea, to national quarrels, according to the infinite variety of accidents, which fall not under foreſight: ſo that the ſtate by this means ſhall be like to a diſtempered and imperfect body, continually ſubject to inflammations and convulſions.

Besides, certainly, both in divinity and in policy, offences of preſumption are the greateſt. Other offences yield and conſent to the law that it is good, not daring to make defence, or to juſtify themſelves; but this offence expreſsly gives the law an affront, as if there were two laws, one a kind of gown-law, and the other a law of reputation, as they term it; ſo that *Paul's* and *Weſtminſter*, the pulpit and the courts of juſtice, muſt give place to the law (as the King ſpeaketh in his proclamation) of ordinary tables, and ſuch reverend aſſemblies: The year-books and ſtatute-books muſt give place to ſome *French* and *Italian* pamphlets, which handle the doctrine of *Duels*, which if they be in the right, *tranſeamus ad illa*, let's receive them, and not keep the people in conflict and diſtraction between two laws.

Again,

AGAIN, my lords, it is a miſerable effect, when young men full of towardneſs and hope, ſuch as the poets call *aurorae filii*, ſons of the morning, in whom the expectation and comfort of their friends conſiſteth, ſhall be caſt away and deſtroyed in ſuch a vain manner; but much more it is to be deplored when ſo much noble and genteel blood ſhall be ſpilt upon ſuch follies, as if it were adventured in the field in ſervice of the King and realm, were able to make the fortune of a day, and to change the fortune of a kingdom. So as your lordſhips ſee what a deſperate evil this is; it troubleth peace, it diſ-furniſheth war, it bringeth calamity upon private men, peril upon the ſtate, and contempt upon the law.

TOUCHING the cauſes of it; the firſt motive no doubt is a falſe and erroneous imagination of honour and credit; and therefore the King, in his laſt proclamation, doth moſt aptly and excellently call them bewitching duels. For, if one judge of it truly, it is no better than a ſorcery that enchanteth the ſpirits of young men, that bear great minds with a falſe ſhew, *ſpecies falſa*; and a kind of ſatanical illuſion and apparition of honour againſt religion, againſt law, againſt moral virtue, and againſt the precedents and examples of the beſt times and valianteſt nations; as I ſhall tell you by and by, when I ſhall ſhew you that the law of *England* is not alone in this point.

BUT then the ſeed of this miſchief being ſuch, it is nouriſhed by vain diſcourſes, and green and unripe conceits, which nevertheleſs have ſo prevailed, as though a man were ſtaid and ſober-minded, and a right believer touching the vanity and unlawfulneſs of theſe duels; yet the ſtream of vulgar opinion is ſuch, as it impoſeth a neceſſity upon men of value to conform themſelves, or elſe there is no living or looking upon men's faces: ſo that we have not to do, in this caſe, ſo much with particular perſons, as with unſound and depraved opinions, like the dominations and ſpirits of the air which the ſcripture ſpeaketh of.

HEREUNTO may be added, that men have almoſt loſt the true notion and underſtanding of fortitude and valour. For fortitude diſtinguiſheth of the grounds of quarrels whether they be juſt; and not only ſo, but whether they be worthy; and ſetteth a better price upon men's lives than to beſtow them idly: nay, it is weakneſs and diſ-eſteem of a man's ſelf, to put a man's life upon ſuch liedger performances; a man's life is not to be trifled away; it is to be offered up and ſacrificed to honourable ſervices, publick merits, good cauſes, and noble adventures. It is in expence of blood as it is in expence of money; it is no liberality to make a profuſion of money upon every vain occaſion, nor no more it is fortitude to make effuſion of blood, except the cauſe be of worth. And thus much for the cauſes of this evil.

FOR the remedies I hope ſome great and noble perſon will put his hand to this plough, and I wiſh that my labours of this day may be but fore-runners to the work of a higher and better hand. But yet to deliver my opinion as may be proper for this time and place, there be four things that I have thought on, as the moſt effectual for the repreſſing of this depraved cuſtom of particular combats.

THE firſt is, that there do appear and be declared a conſtant and ſettled reſolution in the ſtate to aboliſh it. For this is a thing, my lords, muſt go down at once or not at all; for then every particular man will think himſelf acquitted in his reputation, when he ſees that the ſtate takes it to heart, as an inſult againſt the King's power and authority, and thereupon hath abſolutely reſolved to maſter it; like unto that which was ſet down in expreſs words

words in the edict of *Charles* IX. of *France* touching duels, that the King himself took upon him the honour of all that took themselves grieved or interested for not having performed the combat. So must the state do in this business; and in my conscience there is none that is but of a reasonable sober disposition, be he never so valiant, (except it be some furious person that is like a firework) but will be glad of it, when he shall see the law and rule of state disintereſt him of a vain and unnecessary hazard.

Secondly, Care must be taken that this evil be no more cockered, nor the humour of it fed; wherein I humbly pray your lordships that I may speak my mind freely, and yet be understood aright. The proceedings of the great and noble commissioners martial, I honour and reverence much, and of them I speak not in any sort; but I say the compounding of quarrels, which is otherwise in use by private noblemen and gentlemen, it is so punctual, and hath such reference and respect unto the received conceits, what's before-hand, and what's behind-hand, and I cannot tell what, as without all question it doth, in a fashion, countenance and authorize this practice of duels, as if it had in it somewhat of right.

Thirdly, I must acknowledge that I learned out of the King's last proclamation, the most prudent and best applied remedy for this offence (if it shall please his Majesty to use it) that the wit of man can devise. This offence, my lords, is grounded upon a false conceit of honour, and therefore it would be punished in the same kind, *in eo quis rectissime plectitur, in quo peccat.* The fountain of honour is the King and his aspect, and the access to his person continueth honour in life, and to be banished from his presence is one of the greatest eclipses of honour that can be; if his Majesty shall be pleased, that when this court shall censure any of these offences in persons of eminent quality, to add this out of his own power and discipline, that these persons shall be banished and excluded from his court for certain years, and the courts of his Queen and Prince, I think there is no man that hath any good blood in him will commit an act that shall cast him into that darkness, that he may not behold his sovereign's face.

Lastly, And that which more properly concerneth this court: we see, my lords, the root of this offence is stubborn; for it despiseth death, which is the utmost of punishments; and it were a just, but a miserable severity, to execute the law without all remission or mercy, where the case proveth capital. And yet the late severity in *France* was more, where, by a kind of martial law, established by ordinance of the King and parliament, the party that had slain another was presently had to the gibbet, insomuch as gentlemen of great quality were hanged, their wounds bleeding, lest a natural death should prevent the example of justice. But, my lords, the course which we shall take is of far greater lenity, and yet of no less efficacy; which is to punish, in this court, all the middle acts and proceedings which tend to the duel, (which I will enumerate to you anon;) and so to hew and vex the root in the branches, which no doubt in the end will kill the root, and yet prevent the extremity of law.

Now for the law of *England*, I see it excepted to, though ignorantly, in two points:

The one, That it should make no difference between an insidious and foul murther, and the killing of a man upon fair terms, as they now call it.

The other, That the law hath not provided sufficient punishment, and reparations for contumely of words, as the lye, and the like.

But these are no better than childish novelties against the divine law, and

against

againſt all laws in effect, and againſt the examples of all the braveſt and moſt virtuous nations of the world.

For firſt, for the law of God, there is never to be found any difference made in homicide, but between homicide voluntary and involuntary; which we term miſadventure. And for the caſe of miſadventure it ſelf, there were cities of refuge; ſo that the offender was put to his flight, and that flight was ſubject to accident, whether the revenger of blood ſhould overtake him before he had gotten ſanctuary or no. It is true that our law hath made a more ſubtle diſtinction between the will inflamed and the will adviſed, between manſlaughter in heat, and murther upon prepenſed malice or cold blood, as the ſoldiers call it, an indulgence not unfit for a cholerick and warlike nation; for it is true, *ira furor brevis*; a man in fury is not himſelf. This privilege of paſſion the ancient *Roman* law reſtrained, but to a caſe: that was, if the husband took the adulterer in the manner; to that rage and provocation only it gave way, that an homicide was juſtifiable. But for a difference to be made in caſe of killing and deſtroying man, upon a forethought purpoſe, between foul and fair, and as it were between ſingle murder and vyed murder, it is but a monſtrous child of this latter age, and there is no ſhadow of it in any law divine or human. Only it is true, I find in the ſcripture that *Cain* inticed his brother into the field and ſlew him treacherouſly; but *Lamech* vaunted of his manhood, that he would kill a young man, and if it were to his hurt: ſo as I ſee no difference between an inſidious murder, and a braving or preſumptuous murder, but the difference between *Cain* and *Lamech*.

As for examples, in civil ſtates, all memory doth conſent, that *Graecia* and *Rome* were the moſt valiant and generous nations of the world; and that which is more to be noted, they were free eſtates, and not under a monarchy; whereby a man would think it a great deal the more reaſon that particular perſons ſhould have righted themſelves; and yet they had not this practice of duels, nor any thing that bare ſhew thereof: and ſure they would have had it, if there had been any virtue in it. Nay, as he ſaith, *fas eſt & ab hoſte doceri*. It is memorable, that is reported, by a counſellor ambaſſador of the Emperor's, touching the cenſure of the *Turks*, of theſe duels; there was a combat of this kind performed by two perſons of quality of the *Turks*, wherein one of them was ſlain, the other party was convented before the council of Baſhaws; the manner of the reprehenſion was in theſe words: How durſt you undertake to fight one with the other? Are there not Chriſtians enough to kill? Did you not know that whether of you ſhould be ſlain, the loſs would be the Great Seignior's? So as we may ſee that the moſt warlike nations, whether generous or barbarous, have ever deſpiſed this wherein now men glory.

It is true, my lords, that I find combats of two natures authorized, how juſtly I will not diſpute, as to the later of them.

The one, when upon the approaches of armies in the face one of the other, particular perſons have made challenges for trial of valours in the field upon the publick quarrel.

This the *Romans* called *pugna per provocationem*. And this was never, but either between the generals themſelves, who were abſolute, or between particulars by licence of the generals; never upon private authority. So you ſee *David* aſked leave when he fought with *Goliah*; and *Joab*, when the armies were met, gave leave, and ſaid, Let the young men play before us. And of this kind was that famous example in the wars of *Naples*, between twelve *Spaniards*, and twelve *Italians*, where the *Italians* bare away the victory; beſides other

infinite like examples worthy and laudable, ſometimes by ſingles, ſometimes by numbers.

The ſecond combat is a judicial trial of right, where the right is obſcure, introduced by the *Goths* and the *Northern* nations, but more anciently entertained in *Spain*; and this yet remains in ſome caſes as a divine lot of battel, though controverted by divines, touching the lawfulneſs of it: ſo that a wiſe writer ſaith, *Taliter pugnantes videntur tentare Deum, quia hoc volunt ut Deus oſtendat & faciat miraculum, ut juſtam cauſam habens victor efficiatur, quod ſaepe contra accidit.* But howſoever it be, this kind of fight taketh its warrant from law. Nay, the *French* themſelves, whence this folly ſeemeth chiefly to have flown, never had it but only in practice and toleration, and never as authorized by law; and yet now of late they have been fain to purge their folly with extreme rigour, in ſo much as many gentlemen left between death and life in the duels (as I ſpake before,) were haſtened to hanging with their wounds bleeding. For the ſtate found it had been neglected ſo long, as nothing could be thought cruelty which tended to the putting of it down.

As for the ſecond defect pretended in our law, that it hath provided no remedy for lyes and fillips, it may receive like anſwer. It would have been thought a madneſs amongſt the ancient law-givers, to have ſet a puniſhment upon the lye given, which in effect is but a word of denial, a negative of another's ſaying. Any law-giver, if he had been aſked the queſtion, would have made *Solon*'s anſwer: That he had not ordained any puniſhment for it, becauſe he never imagined the world would have been ſo fantaſtical as to take it ſo highly. The civilians, they diſpute whether an action of injury lie for it, and rather reſolve the contrary. And *Francis* the firſt of *France*, who firſt ſet on and ſtamped this diſgrace ſo deep, is taxed by the judgment of all wiſe writers for beginning the vanity of it; for it was he, that when he had himſelf given the lye and defy to the Emperor, to make it current in the world, ſaid in a ſolemn aſſembly, That he was no honeſt man that would bear the lye: which was the fountain of this new learning.

As for words of reproach and contumely (whereof the lye was eſteemed none) it is not credible (but that the orations themſelves are extant) what extreme and exquiſite reproaches were toſſed up and down in the ſenate of *Rome* and the places of aſſembly, and the like in *Graecia*, and yet no man took himſelf fouled by them, but took them but for breath, and the ſtyle of an enemy, and either deſpiſed them or returned them, but no blood ſpilt about them.

So of every touch or light blow of the perſon, they are not in themſelves conſiderable, ſave that they have got upon them the ſtamp of a diſgrace, which maketh theſe light things paſs for great matter. The law of *England*, and all laws, hold theſe degrees of injury to the perſon, ſlander, battery, maim, and death; and if there be extraordinary circumſtances of deſpight and contumely, as in caſe of libels, and baſtinadoes, and the like, this court taketh them in hand and puniſheth them exemplarily. But for this apprehenſion of a diſgrace, that a fillip to the perſon ſhould be a mortal wound to the reputation, it were good that men did hearken unto the ſaying of *Conſalvo*, the great and famous commander, that was wont to ſay, a gentleman's honour ſhould be, *de tela craſſiore*, of a good ſtrong warp or web, that every little thing ſhould not catch in it, when as now it ſeems they are but of cobweb-lawn or ſuch light ſtuff, which certainly is weakneſs, and not true greatneſs of mind, but like a ſick man's body, that is ſo tender that it

it feels every thing. And ſo much in maintenance and demonſtration of the wiſdom and juſtice of the law of the land.

For the capacity of this court, I take this to be a ground infallible: that whereſoever an offence is capital, or matter of felony, though it be not acted, there the combination or practice tending to that offence is puniſhable in this court as a high miſdemeanor. So practice to impoiſon, though it took no effect; way-laying to murder, though it took no effect, and the like; have been adjudged heinous miſdemeanors puniſhable in this court. Nay, inceptions and preparations in inferior crimes (that are not capital) as ſuborning and preparing of witneſſes that were never depoſed, or depoſed nothing material, have likewiſe been cenſured in this court, as appeareth by the decree in *Garnon*'s caſe.

Why then, the major propoſition being ſuch, the minor cannot be denied: for every appointment of the field is but combination and plotting of murder; let them gild it how they liſt, they ſhall never have fairer terms of me in place of juſtice. Then the concluſion followeth, that it is a caſe fit for the cenſure of this court. And of this there be precedents in the very point of challenge.

It was the caſe of *Wharton*, plaintiff againſt *Ellekar* and *Acklam* defendants, where *Acklam* being a follower of *Ellekar*'s, was cenſured for carrying a challenge from *Ellekar* to *Wharton*, though the challenge was not put in writing, but delivered only by word of meſſage; and there are words in the decree that ſuch challenges are to the ſubverſion of government.

These things are well known, and therefore I needed not ſo much to have inſiſted upon them, but that in this caſe I would be thought not to innovate any thing of my own head, but to follow the former precedents of the court, though I mean to do it more throughly, becauſe the time requires it more.

Therefore now to come to that which concerneth my part; I ſay, that by the favour of the King and the court, I will proſecute in this court in the caſes following.

If any man ſhall appoint the field, though the fight be not acted or performed.

If any man ſhall ſend any challenge in writing, or any meſſage of challenge.

If any man carry or deliver any writing or meſſage of challenge.

If any man ſhall accept or return a challenge.

If any man ſhall accept to be a ſecond in a challenge of either ſide.

If any man ſhall depart the realm, with intention and agreement to perform the fight beyond the ſeas.

If any man ſhall revive a quarrel by any ſcandalous bruits or writings, contrary to a former proclamation publiſhed by his Majeſty in that behalf.

Nay, I hear there be ſome counſel learned of duels, that tell young men when they are before-hand, and when they are otherwiſe, and thereby incenſe and incite them to the duel, and make an art of it; I hope I ſhall meet with ſome of them too: and I am ſure, my lords, this courſe of preventing duels in nipping them in the bud, is fuller of clemency and providence than the ſuffering them to go on, and hanging men with their wounds bleeding, as they did in *France*.

To conclude, I have ſome petitions to make firſt to your lordſhip, my lord chancellor, that in caſe I be advertiſed of a purpoſe in any to go beyond

yond the ſea to fight, I may have granted his Majeſty's writ of *ne exeat regnum* to ſtop him, for this giant beſtrideth the ſea, and I would take and ſnare him by the foot on this ſide; for the combination and plotting is on this ſide, though it ſhould be acted beyond ſea. And your lordſhip ſaid notably the laſt time I made a motion in this buſineſs, that a man may be as well *fur de ſe*, as *felo de ſe*, if he ſteal out of the realm for a bad purpoſe; and for the ſatisfying of the words of the writ, no man will doubt but he doth *machinari contra coronam* (as the words of the writ be) that ſeeketh to murder a ſubject; for that is ever, *contra coronam & dignitatem*. I have alſo a ſuit to your lordſhips all in general, that for juſtice ſake, and for true honour's ſake, honour of religion, law, and the King our maſter, againſt this fond and falſe diſguiſe or puppetry of honour, I may in my proſecution (which it is like enough may ſometimes ſtir coals, which I eſteem not for my particular, but as it may hinder the good ſervice) I may (I ſay) be countenanced and aſſiſted from your lordſhips. Laſtly, I have a petition to the nobleſs and gentlemen of *England*, that they would learn to eſteem themſelves at a juſt price. *Non hos quaeſitum munus in uſus*, their blood is not to be ſpilt like water or a vile thing; therefore that they would reſt perſuaded there cannnot be a form of honour, except it be upon a worthy matter. But for this, *ipſi viderint*, I am reſolved. And thus much for the general, now to the preſent caſe.

In Camera ſtellata coram concilio ibidem, 26 *die* Januarii *anno undecimo* Jacobi *Regis*.

PRESENT

George Lord Arch-biſhop of *Canterbury*.
Thomas Lord *Elleſmere* Lord Chancellor of *England*.
Henry Earl of *Northampton* Lord Privy Seal.
Charles Earl of *Nottingham* Lord High Admiral of *England*.
Thomas Earl of *Suffolk* Lord Chamberlain.
John Lord Biſhop of *London*.
Edward Lord *Zouch*.
William Lord *Knolles* Treaſurer of the Houſhold.
Edward Lord *Wotton* Comptroller.
John Lord *Stanhope*, Vice-chamberlain.
Sir *Edward Coke*, Knight, Lord Chief Juſtice of *England*.
Sir *Henry Hobart*, Knight, Lord Chief Juſtice of the Common-pleas.
Sir *Julius Caeſar*, Knight, Chancellor of the Exchequer.

The DECREE *of the* STAR-CHAMBER *againſt* DUELS.

THIS day was heard and debated at large the ſeveral matters of informations here exhibited by Sir *Francis Bacon*, Knight, his Majeſty's Attorney-General, the one againſt *William Prieſt*, gentleman, for writing and ſending a letter of challenge, together with a ſtick, which ſhould

ſhould be the length of the weapon: and the other againſt *Richard Wright*, eſquire, for carrying and delivering the ſaid letter and ſtick unto the party challenged, and for other contemptuous and inſolent behaviour uſed before the juſtices of the peace in *Surrey* at their ſeſſions, before whom he was convented. Upon the opening of which cauſe, his Highneſs's ſaid attorney-general did firſt give his reaſon to the court; why in a caſe which he intended ſhould be a leading caſe, for the repreſſing of ſo great a miſchief in the commonwealth, and concerning an offence which reigneth chiefly amongſt perſons of honour and quality, he ſhould begin with a cauſe which had paſſed between ſo mean perſons as the defendants ſeemed to be; which he ſaid was done, becauſe he found this cauſe ready publiſhed: and in ſo growing an evil, he thought good to loſe no time; whereunto he added, that it was not amiſs ſometimes to beat the dog before the lion; ſaying farther, that he thought it would be ſome motive for perſons of birth and countenance to leave it, when they ſaw it was taken up by baſe and mechanical fellows; but concluded, that he reſolved to proceed without reſpect of perſons for the time to come, and for the preſent to ſupply the meanneſs of this particular caſe by inſiſting the longer upon the general point.

WHEREIN he did firſt expreſs unto the court at large, the greatneſs and dangerous conſequence of this preſumptuous offence, which extorted revenge out of the magiſtrate's hand, and gave boldneſs to private men to be law-givers to themſelves; the rather, becauſe it is an offence that doth juſtify it ſelf againſt the law, and plainly gives the law an affront; deſcribing alſo the miſerable effect which it draweth upon private families, by cutting off young men, otherwiſe of good hope, and chiefly the loſs of the King and the commonwealth, by the caſting away of much good blood, which being ſpent in the field upon occaſion of ſervice, were able to continue the renown which this kingdom hath obtained in all ages, of being eſteemed victorious.

SECONDLY, his Majeſty's ſaid attorney-general did diſcourſe touching the cauſes and remedies of this miſchief that prevailed ſo in theſe times, ſhewing the ground thereof to be a falſe and erroneous imagination of honour and credit, according to the term which was given to thoſe duels by a former proclamation of his Majeſty's, which called them bewitching duels, for that it is no better than a kind of ſorcery which enchanteth the ſpirits of young men, which bear great minds with a ſhew of honour, in that which is no honour indeed; being againſt religion, law, moral virtue, and againſt the precedents and examples of the beſt times, and valianteſt nations of the world; which though they excelled for proweſs and military virtue in a publick quarrel, yet knew not what theſe private duels meant; ſaying farther, that there was too much way and countenance given unto theſe duels, by the courſe that is held by noblemen and gentlemen in compounding of quarrels, who uſe to ſtand too punctually upon conceits of ſatisfactions and diſtinctions, what is before-hand, and what behind-hand, which do but feed the humour: adding likewiſe that it was no fortitude to ſhew valour in a quarrel, except there were a juſt and worthy ground of the quarrel; but that it was weakneſs to ſet a man's life at ſo mean a rate as to beſtow it upon trifling occaſions, which ought to be rather offered up and ſacrificed to honourable ſervices, publick merits, good cauſes, and noble adventures. And as concerning the remedies, he concluded; that the only way was, that the ſtate would declare a conſtant and ſettled reſolution to maſter and put down this preſumption in private men, of whatſoever degree, of righting their

own wrongs, and this to do at once; for that then every particular man would think himſelf acquitted in his reputation, when that he ſhall ſee that the ſtate takes his honour into their hands, and ſtandeth between him and any intereſt or prejudice, which he might receive in his reputation for obeying: whereunto he added likewiſe, that the wiſeſt and mildeſt way to ſuppreſs theſe duels, was rather to puniſh in this court all the acts of preparation, which did in any wiſe tend to the duels, (as this of challenges and the like,) and ſo to prevent the capital puniſhment, and to vex the root in the branches, than to ſuffer them to run on to the execution, and then to puniſh them capitally after the manner of *France*; where of late times gentlemen of great quality that had killed others in duels, were carried to the gibbet with their wounds bleeding, leſt a natural death ſhould keep them from the example of juſtice.

THIRDLY, His Majeſty's ſaid attorney-general did, by many reaſons which he brought and alledged, free the law of *England* from certain vain and childiſh exceptions, which are taken by theſe duelliſts: the one, becauſe the law makes no difference in puniſhment between an inſidious and foul murther, and the killing a man upon challenge and fair terms, as they call it. The other, for that the law hath not provided ſufficient puniſhment and reparation for contumely of words, as the lye, and the like; wherein his Majeſty's ſaid attorney-general did ſhew, by many weighty arguments and examples, that the law of *England* did conſent with the law of God and the law of nations in both thoſe points, and that this diſtinction in murther between foul and fair, and this grounding of mortal quarrels upon uncivil and reproachful words, or the like diſgraces, was never authoriſed by any law or ancient examples; but it is a late vanity crept in from the practice of the *French*, who themſelves ſince have been ſo weary of it, as they have been forced to put it down with all ſeverity.

FOURTHLY, His Majeſty's ſaid attorney-general did prove unto the court by rules of law and precedents, that this court hath capacity to puniſh ſending and accepting of challenges, though they were never acted nor executed; taking for a ground infallible that whereſoever an offence is capital or matter of felony, if it be acted and performed, there the conſpiracy, combination, or practice tending to the ſame offence is puniſhable as a high miſdemeanor, although they never were performed. And therefore, that practice to impoiſon, though it took no effect, and the like, have been puniſhed in this court, and cited the precedent in *Garnon*'s caſe, wherein a crime of a much inferior nature, the ſuborning and preparing of witneſſes, though they never were depoſed, or depoſed nothing material, was cenſured in this court: whereupon he concluded, that for as much as every appointment of the field is in law but a combination of plotting of a murther, howſoever men might gild it; that therefore it was a caſe fit for the cenſure of this court: and therein he vouched a precedent in the very point, that in a caſe between *Wharton* plaintiff, and *Ellekar* and *Acklam* defendants; *Acklam* being a follower of *Ellekar*, had carried a challenge unto *Wharton*; and although it were by word of mouth, and not by writing, yet it was ſeverely cenſured by the court; the decree having words, that ſuch challenges do tend to the ſubverſion of government. And therefore his Majeſty's attorney willed the ſtanders-by to take notice that it was no innovation that he brought in, but a proceeding, according to former precedents of the court, although he purpoſed to follow it more thoroughly than had been done ever heretofore, becauſe the times did more and more require it. Laſtly, his Majeſty's ſaid attorney-general did declare and publiſh to the court in ſeveral articles, his pur-

poſe

poſe and reſolution in what caſes he did intend to proſecute offences of that nature in this court; that is to ſay, that if any man ſhall appoint the field, although the fight be not acted or performed; if any man ſhall ſend any challenge in writing or meſſage of challenge; if any man ſhall carry or deliver any writing or meſſage of challenge; if any man ſhall accept or return a challenge; if any man ſhall accept to be a ſecond in a challenge of either part; if any man ſhall depart the realm with intention and agreement to perform the fight beyond the ſeas; if any man ſhall revive a quarrel by any ſcandalous bruits or writings contrary to a former proclamation, publiſhed by his Majeſty in that behalf; that in all theſe caſes his Majeſty's attorney-general, in diſcharge of his duty, by the favour and aſſiſtance of his Majeſty and the court, would bring the offenders of what ſtate or degree ſoever to the juſtice of this court, leaving the lords commiſſioners martial to the more exact remedies: Adding farther, that he heard there were certain counſel learned of duels, that tell young men when they are beforehand, and when they are otherwiſe, and did incenſe and incite them to the duel, and made an art of it; who likewiſe ſhould not be forgotten. And ſo concluded with two petitions, the one in particular to the lord chancellor, that in caſe advertiſement were given of a purpoſe in any to go beyond the ſeas to fight, there might be granted his Majeſty's writ of *ne exeat regnum* againſt him; and the other to the lords in general, that he might be aſſiſted and countenanced in this ſervice.

After which opening and declaration of the general cauſe, his Majeſty's ſaid attorney did proceed to ſet forth the proofs of this particular challenge and offence now in hand, and brought to the judgement and cenſure of this honourable court; whereupon it appeared to this honourable court by the confeſſion of the ſaid defendant *Prieſt* himſelf, that he having received ſome wrong and diſgrace at the hands of one *Hutcheſt*, did thereupon in revenge thereof write a letter to the ſaid *Hutcheſt*, containing a challenge to fight with him at ſingle rapier, which letter the ſaid *Prieſt* did deliver to the ſaid defendant *Wright*, together with a ſtick containing the length of the rapier, wherewith the ſaid *Prieſt* meant to perform the fight. Whereupon the ſaid *Wright* did deliver the ſaid letter to the ſaid *Hutcheſt*, and did read the ſame unto him; and after the reading thereof, did alſo deliver to the ſaid *Hutcheſt* the ſaid ſtick, ſaying, that the ſame was the length of the weapon mentioned in the ſaid letter. But the ſaid *Hutcheſt* (dutifully reſpecting the preſervation of his Majeſty's peace) did refuſe the ſaid challenge, whereby no farther miſchief did enſue thereupon. This honourable court, and all the honourable preſence this day ſitting, upon grave and mature deliberation, pondering the quality of theſe offences, they generally approved the ſpeech and obſervations of his Majeſty's ſaid attorney-general, and highly commended his great care and good ſervice in bringing a cauſe of this nature to publick puniſhment and example, and in profeſſing a conſtant purpoſe to go on in the like courſe with others; letting him know, that he might expect from the court all concurrence and aſſiſtance in ſo good a work. And thereupon the court did by their ſeveral opinions and ſentences declare how much it imported the peace and proſperous eſtate of his Majeſty and his kingdom to nip this practice and offence of duels in the head, which now did over-ſpread and grow univerſal, even among mean perſons, and was not only entertained in practice and cuſtom, but was framed into a kind of art and precepts: ſo that according to the ſaying of the ſcripture, *miſchief* is *imagined* like *a law*. And the court with one conſent did declare their opinions: That by the ancient

cient law of the land, all inceptions, preparations, and combinations to execute unlawful acts, though they never be performed, as they be not to be puniſhed capitally, except it be in caſe of treaſon, and ſome other particular caſes of ſtatute law; ſo yet they are puniſhable as miſdemeanors and contempts: And that this court was proper for offences of ſuch nature; eſpecially in this caſe, where the bravery and inſolency of the times are ſuch as the ordinary magiſtrates and juſtices that are truſted with the preſervation of the peace are not able to maſter and repreſs thoſe offences, which were by the court at large ſet forth, to be not only againſt the law of God, to whom, and his ſubſtitutes, all revenge belongeth, as part of his prerogative, but alſo againſt the oath and duty of every ſubject unto his Majeſty, for that the ſubject doth ſwear unto him by the ancient law allegiance of life and member; whereby it is plainly inferred, that the ſubject hath no diſpoſing power over himſelf of life and member to be ſpent or ventured according to his own paſſions and fancies, inſomuch as the very practice of chivalry in juſts and tournays, which are but images of martial actions, appear by ancient precedents not to be lawful without the King's licence obtained. The court alſo noted, that theſe private duels or combats were of another nature from the combats which have been allowed by the law as well of this land as of other nations for the tryal of rights or appeals. For that thoſe combats receive direction and authority from the law; whereas theſe contrariwiſe ſpring only from the unbridled humours of private men. And as for the pretence of honour, the court much miſliking the confuſion of degrees which is grown of late, (every man aſſuming unto himſelf the term and attribute of honour) did utterly reject and condemn the opinion that the private duel, in any perſon whatſoever, had any grounds of honour; as well becauſe nothing can be honourable that is not lawful, and that it is no magnanimity or greatneſs of mind, but a ſwelling and tumour of the mind, where there faileth a right and ſound judgment; as alſo for that it was rather juſtly to be eſteemed a weakneſs, and a conſcience of ſmall value in a man's ſelf to be dejected ſo, with a word or trifling diſgrace, as to think there is no re-cure of it, but by the hazard of life; whereas true honour in perſons that know their own worth is not of any ſuch brittle ſubſtance, but of a more ſtrong compoſition. And finally, the court ſhewing a firm and ſettled reſolution to proceed with all ſeverity againſt theſe duels, gave warning to all young noblemen and gentlemen, that they ſhould not expect the like connivance or toleration as formerly have been, but that juſtice ſhould have a full paſſage without protection or interruption. Adding, that after a ſtrait inhibition, whoſoever ſhould attempt a challenge or combat, in caſe where the other party was reſtrained to anſwer him, (as now all good ſubjects are) did by their own principles receive the diſhonour and diſgrace upon himſelf. And for the preſent cauſe, the court hath ordered, adjudged, and decreed, that the ſaid *William Prieſt* and *Richard Wright* be committed to the priſon of the *Fleet*, and the ſaid *Prieſt* to pay five hundred pounds, and the ſaid *Wright* five hundred marks, for their ſeveral fines to his Majeſty's uſe. And to the end, that ſome more publick example may be made hereof amongſt his Majeſty's people, the court hath further ordered and decreed, that the ſaid *Prieſt* and *Wright* ſhall at the next aſſizes, to be holden in the county of *Surrey*, publickly, in face of the court, the judges ſitting, acknowledge their high contempt and offence againſt God, his Majeſty, and his laws, and ſhew themſelves penitent for the ſame. Moreover, the wiſdom of this high and honourable court thought it meet and neceſſary that all ſorts of his Majeſty's ſubjects ſhould underſtand

and

and take notice of that which hath been ſaid and handled this day touching this matter, as well by his Highneſs's attorney-general, as by the lords judges, touching the law in ſuch caſes. And therefore the court hath enjoined maſter attorney to have ſpecial care to the penning of this decree, for the ſetting forth in the ſame ſummarily the matters and reaſons, which have been opened and delivered by the court touching the ſame; and nevertheleſs alſo at ſome time convenient to publiſh the particulars of his ſpeech and declaration, as very meet and worthy to be remembred and made known unto the world as theſe times are. And this decree, being in ſuch ſort carefully drawn and penned, the whole court thought it meet, and ſo have ordered and decreed that the ſame be not only read and publiſhed at the next aſſizes for *Surry*, at ſuch time as the ſaid *Prieſt* and *Wright* are to acknowledge their offences as aforeſaid; but that the ſame be likewiſe publiſhed and made known in all ſhires of this kingdom. And to that end the juſtices of aſſize are required by this honourable court to cauſe this decree to be ſolemnly read and publiſhed in all the places and ſittings of their ſeveral circuits, and in the greateſt aſſembly; to the end, that all his Majeſty's ſubjects may take knowledge and underſtand the opinion of this honourable court in this caſe, and in what meaſure his Majeſty and this honourable court purpoſeth to puniſh ſuch as ſhall fall into the like contempt and offences hereafter. Laſtly, this honourable court much approving that which the right honourable Sir *Edw. Coke*, Kt. Lord Chief Juſtice of *England*, did now deliver touching the law in this caſe of duels, hath enjoined his lordſhip to report the ſame in print, as he hath formerly done divers other caſes, that ſuch as underſtand not the law in that behalf, and all others may better direct themſelves and prevent the danger thereof hereafter.

THE

CHARGE

OF

Sir *FRANCIS BACON*, Kt. his Majeſty's Attorney-General, againſt *William Talbot*, a counſellor at law, of *Ireland*, upon an information in the *Star-Chamber Ore tenus*, for a writing under his hand, whereby the ſaid *William Talbot*, being demanded whether the doctrine of *Suarez*, touching depoſing and killing of Kings excommunicated were true or no? he anſwered, that he referred himſelf unto that which the catholick *Roman* church ſhould determine thereof. *Ultimo die termini* Hilarii, *undecimo* Jacobi Regis.

My Lords,

I BROUGHT before you the firſt ſitting of this term the cauſe of duels; but now this laſt ſitting I ſhall bring before you a cauſe concerning the greateſt duel, which is in the Chriſtian world, the duels and conflicts between the lawful authority of ſovereign Kings, which is God's

ordinance for the comfort of human Society, and the ſwelling pride and uſurpation of the ſee of *Rome*, *in temporalibus*, tending altogether to anarchy and confuſion. Wherein if this pretence in the Pope of *Rome* by cartels, to make ſovereign Princes as the banditti, and to proſcribe their lives, and to expoſe their kingdoms to prey; if theſe pretences, I ſay, and all perſons that ſubmit themſelves to that part of the Pope's power, be not by all poſſible ſeverity repreſſed and puniſhed, the ſtate of Chriſtian Kings will be no other than the ancient torment deſcribed by the poets in the hell of the heathen; a man ſitting richly robed, ſolemnly attended, delicious fare, *&c.* with a ſword hanging over his head, hanging by a ſmall thread, ready every moment to be cut down by an accurſing and accurſed hand. Surely I thought they had been the prerogatives of God alone, and of his ſecret judgments. *Solvam cingula regum, I will looſen the girdles of Kings*; or again, *he poureth contempt upon princes*; or *I will give a King in my wrath, and take him away again in my diſpleaſure*; and the like: But if theſe be the claims of a mortal man, certainly they are but the myſteries of that perſon which *exalts himſelf above all that is called God, ſupra omne quod dicitur Deus.* Note it well, not above God, (though that in a ſenſe be true in reſpect of the authority they claim over the ſcriptures) but *above all that is called God*; that is, lawful Kings and Magiſtrates.

But my lords, in this duel I find this *Talbot* that is now before you but a coward; for he hath given ground, he hath gone backward and forward; but in ſuch a faſhion, and with ſuch interchange of repenting and relapſing, as I cannot tell whether it doth extenuate or aggravate his offence. If he ſhall more publickly in the face of the court fall and ſettle upon a right mind, I ſhall be glad of it; and he that would be againſt the King's mercy, I would he might need the King's mercy: but nevertheleſs the court will proceed by rules of juſtice.

The offence wherewith I charge this *Talbot*, priſoner at the bar, is this in brief and effect: That he hath maintained, and maintaineth under his hand a power in the pope for the depoſing and murthering of Kings. In what ſort he doth this, when I come to the proper and particular charge, I will deliver it in his own words without preſſing or ſtraining.

But before I come to the particular charge of this man, I cannot proceed ſo coldly; but I muſt expreſs unto your lordſhips the extreme and imminent danger wherein our dear and dread Sovereign is, and in him we all; nay, and wherein all Princes of both religions (for it is a common cauſe) do ſtand at this day, by the ſpreading and enforcing of this furious and pernicious opinion of the pope's temporal power: which though the modeſt ſort would blanch with the diſtinction of *in ordine ad ſpiritualia*, yet that is but an eluſion; for he that maketh the diſtinction, will alſo make the caſe. This peril, though it be in itſelf notorious, yet becauſe there is a kind of dulneſs, and almoſt a lethargy in this age, give me leave to ſet before you two glaſſes, ſuch as certainly the like never met in one age; the glaſs of *France* and the glaſs of *England*. In that of *France* the tragedies acted and executed in two immediate Kings; in the glaſs of *England*, the ſame, or more horrible, attempted likewiſe in a Queen and King immediate, but ending in a happy deliverance. In *France*, *Henry* III. in the face of his army, before the walls of *Paris*, ſtabbed by a wretched Jacobine fryar. *Henry* IV. (a prince that the *French* do ſurname the great) one that had been a ſaviour and redeemer of his country from infinite calamities, and a reſtorer of that monarchy to the ancient ſtate and ſplendor, and a prince almoſt heroical, (except it be

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in the point of revolt from religion) at a time when he was as it were to mount on horſeback for the commanding of the greateſt forces that of long time had been levied in *France*, this King likewiſe ſtillettoed by a raſcal votary, which had been enchanted and conjured for that purpoſe.

In *England* Queen *Elizabeth*, of bleſſed memory, a Queen comparable and to be rank'd with the greateſt Kings, oftentimes attempted by like votaries, *Sommervile*, *Parry*, *Savage*, and others, but ſtill protected by the watchman that ſlumbereth not. Again our excellent ſovereign King *James*, the ſweetneſs and clemency of whoſe nature were enough to quench and mortify all malignity, and a King ſhielded and ſupported by poſterity; yet this King in the chair of Majeſty, (his vine and olive branches about him) attended by his nobles and third eſtate in parliament, ready, in the twinkling of an eye, (as if it had been a particular doomſday) to have been brought to aſhes, diſperſed to the four winds. I noted the laſt day, my lord chief juſtice, when he ſpake of this powder treaſon, he laboured for words; though they came from him with great efficacy, yet he truly confeſſed, and ſo muſt all men, that that treaſon is above the charge and report of any words whatſoever.

Now, my lords, I cannot let paſs, but in theſe glaſſes which I ſpake of, beſides the facts themſelves and danger, to ſhew you two things; the one the ways of God Almighty, which turneth the ſword of *Rome* upon the Kings that are the vaſſals of *Rome*, and over them gives it power; but protecteth thoſe Kings which have not accepted the yoke of his tyranny from the effects of his malice: the other, that (as I ſaid at firſt) this is a common cauſe of Princes; it involveth Kings of both religions; and therefore his Majeſty did moſt worthily and prudently ring out the alarm-bell, to awaken all other Princes to think of it ſeriouſly, and in time. But this is a miſerable caſe the while, that theſe *Roman* ſoldiers do either thruſt the ſpear into the ſides of God's anointed, or at leaſt they crown them with thorns; that is, piercing and pricking cares and fears, that they can never be quiet or ſecure of their lives or ſtates. And as this peril is common to Princes of both religions, ſo Princes of both religions have been likewiſe equally ſenſible of every injury that touch'd their temporals.

Thuanus reports in his ſtory, that when the realm of *France* was interdicted by the violent proceedings of Pope *Julius* the ſecond, the King *Lewis* the twelfth, otherwiſe noted for a moderate Prince, cauſed coins of gold to be ſtamped with his own image, and this ſuperſcription, *Perdam nomen Babylonis e terra.* And *Thuanus* ſaith, himſelf hath ſeen divers pieces thereof. So as this catholick King was ſo much incenſed at that time, in reſpect of the Pope's uſurpation, as he did fore-run *Luther*, in applying *Babylon* to *Rome*. *Charles* the fifth Emperor, who was accounted one of the Pope's beſt ſons, yet proceeded in matter temporal towards Pope *Clement* with ſtrange rigour; never regarding the pontificality, but kept him priſoner eighteen months in a peſtilent priſon; and was hardly diſſuaded by his council from having ſent him captive into *Spain*; and made ſport with the threats of *Froſberg* the *German*, who wore a ſilk rope under his caſſock, which he would ſhew in all companies; telling them that he carried it to ſtrangle the Pope with his own hands. As for *Philip* the fair, it is the ordinary example, how he brought Pope *Boniface* the eighth to an ignominious end, dying mad and enraged; and how he ſtyled his reſcript to the Pope's bull, whereby he challenged his temporals, *ſciat fatuitas veſtra*, not your beatitude, but your ſtultitude; a ſtyle worthy to be continued in like caſes; for certainly that claim is merely folly and fury. As for native examples

here, it is too long a field to enter into them. Never Kings of any nation kept the partition-wall between temporal and ſpiritual better in times of greateſt ſuperſtition: I report me to King *Edward* I. that ſet up ſo many croſſes, and yet croſſed that part of the pope's juriſdiction, no man more ſtrongly. But theſe things have paſſed better pens and ſpeeches: here I end them.

But now to come to the particular charge of this man, I muſt inform your lordſhips the occaſion and nature of this offence: There hath been publiſhed lately to the world a work of *Suarez* a *Portugueſe*, a profeſſor in the univerſity of *Coimbra*, a confident and daring writer, ſuch an one as *Tully* deſcribes in deriſion; *nihil tam verens, quam ne dubitare, aliqua de re, videretur:* one that fears nothing but this, leſt he ſhould ſeem to doubt of any thing. A fellow that thinks with his magiſtrality and gooſe-quill, to give laws and menages to crowns and ſcepters. In this man's writing this doctrine of depoſing and murdering Kings, ſeems to come to a higher elevation than heretofore; and it is more arted and poſitived than in others. For in the paſſages which your lordſhips ſhall hear read anon; I find three aſſertions which run not in the vulgar track, but are ſuch as wherewith mens ears (as I ſuppoſe) are not much acquainted; whereof the firſt is, That the pope hath a ſuperiority over Kings, as ſubjects, to depoſe them; not only for ſpiritual crimes, as hereſy and ſchiſm, but for faults of a temporal nature; foraſmuch as a tyrannical government tendeth ever to the deſtruction of ſouls. So by this poſition, Kings of either religion are alike comprehended, and none exempted. The ſecond, that after a ſentence given by the pope, this writer hath defined of a ſeries, or ſucceſſion, or ſubſtitution of hangmen, or *Bourreaux*, to be ſure, leſt an executioner ſhould fail. For he ſaith, That when a King is ſentenced by the pope to deprivation or death, the executioner, who is firſt in place, is he to whom the pope ſhall commit the authority, which may be a foreign prince, it may be a particular ſubject, it may be, in general, to the firſt undertaker. But if there be no direction or aſſignation in the ſentence ſpecial nor general, then, *de jure*, it appertains to the next ſucceſſor: (a natural and pious opinion; for commonly they are ſons, or brothers, or near of kin, all is one:) ſo as the ſucceſſor be apparent, and alſo that he be a catholick. But if he be doubtful, or that he be no catholick, then it devolves to the commonalty of the kingdom; ſo as he will be ſure to have it done by one miniſter or other. In the third he diſtinguiſheth of two kinds of tyrants, a tyrant in title, and a tyrant in regiment; the tyrant in regiment cannot be reſiſted or killed without a ſentence precedent by the pope; but a tyrant in title may be killed by any private man whatſoever. By which doctrine he hath put the judgment of Kings titles (which I will undertake are never ſo clean but that ſome vain quarrel or exception may be made unto them,) upon the fancy of every private man; and alſo couples the judgment and execution together, that he may judge him by a blow, without any other ſentence.

Your lordſhips ſee what monſtrous opinions theſe are, and how both theſe beaſts, the beaſt with ſeven heads, and the beaſt with many heads, pope and people, are at once let in, and ſet upon the ſacred perſons of Kings.

Now to go on with the narrative; there was an extract made of certain ſentences and portions of this book (being of this nature that I have ſet forth) by a great prelate and counſellor upon a juſt occaſion; and there being ſome hollowneſs and heſitation in theſe matters (wherein it is a thing impi-

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ous to doubt) discovered and perceived in *Talbot*; he was asked his opinion concerning these opinions, in the presence of his Majesty: and afterward they were delivered to him, that upon advice, and *sedato animo*, he might declare himself. Whereupon, under his hand, he subscribes thus;

May it please your honourable good lordships, concerning this doctrine of Suarez; *I do perceive, by what I have read in his book, that the same doth concern matter of faith, the controversy growing upon exposition of scriptures and councils, wherein (being ignorant and not studied) I cannot take upon me to judge; but I do submit my opinion therein to the judgment of the catholick* Roman *church, as in all other points concerning faith I do. And for matter concerning my loyalty, I do acknowledge my Sovereign Liege Lord King* James, *to be lawful and undoubted King of all the Kingdoms of* England, Scotland, *and* Ireland; *and I will bear true faith and allegiance to his Highness during my life.* WILLIAM TALBOT.

Now, my lords, upon these words I conceive *Talbot* to have committed a great offence, and such a one as if he had entered into a voluntary and malicious publication of the like writing, it would have been too great an offence for the capacity of this court. But because it grew from a question ask'd by a council of estate, and so rather seemeth, in a favourable construction, to proceed from a kind of submission to answer, than from any malicious or insolent will; it was fit, according to the clemency of these times, to proceed in this manner before your lordships: and yet let the hearers take these things right; for certainly, if a man be required by the lords of the council to deliver his opinion whether King *James* be King or no? and he deliver his opinion that he is not, this is high treason: but I do not say that these words amount to that; and therefore let me open them truly to your lordships, and therein open also (it may be) the eyes of the offender himself, how far they reach.

My lords, a man's allegiance must be independent and certain, not dependent and conditional. *Elizabeth Barton*, that was called the holy maid of *Kent*, affirmed, that if King *H.* VIII. did not take *Katharine* of *Spain* again to his wife within a twelvemonth, he should be no King: and this was judged treason. For though this act be contingent and future, yet the preparing of the treason is present.

And in like manner, if a man should voluntarily publish or maintain; that whensoever a bull or deprivation shall come forth against the King, that from thenceforth he is no longer King; this is of like nature. But with this I do not charge you neither; but this is the true latitude of your words, that if the doctrine touching the killing of Kings be matter of faith, that you submit your self to the judgment of the catholick *Roman* church: so as now (to do you right) your allegiance doth not depend simply upon a sentence of the pope's deprivation against the King; but upon another point also, if these doctrines be already, or shall be declared to be matter of faith. But, my lords, there is little won in this: there may be some difference to the guilt of the party, but there is little to the danger of the King. For the same pope of *Rome* may, with the same breath, declare both. So as still upon the matter, the King is made but tenant at will of his life and kingdoms; and the allegiance of his subjects is pinn'd upon the pope's acts. And certainly it is time to stop the current of this opinion of acknowledgment of the pope's power *in temporalibus*; or else it will sapp and supplant the seat of Kings.

And let it not be miſtaken, that Mr. *Talbot*'s offence ſhould be no more than the refuſing the oath of allegiance. For it is one thing to be ſilent, and another thing to affirm. As for the point of matter of faith, or not of faith, to tell your lordſhips plain, it would aſtoniſh a man to ſee the gulf of this implied belief. Is nothing excepted from it? If a man ſhould aſk Mr. *Talbot*, whether he do condemn murder, or adultery, or rape, or the doctrine of *Mahomet* or of *Arius*, inſtead of *Suarez?* Muſt the anſwer be with this exception, that if the queſtion concern matter of faith, (as no queſtion it doth, for the moral law is matter of faith) that therein he will ſubmit himſelf to what the church ſhall determine? And, no doubt, the murder of princes is more than ſimple murder. But to conclude, *Talbot*, I will do you this right, and I will not be reſerved in this, but to declare that, that is true; that you came afterwards to a better mind; wherein, if you had been conſtant, the King, out of his great goodneſs, was reſolved not to have proceeded with you in courſe of juſtice: But then again you ſtarted aſide like a broken bow. So that by your variety and vacillation you loſt the acceptable time of the firſt grace, which was not to have convented you.

NAY, I will go farther with you: your laſt ſubmiſſion I conceive to be ſatisfactory and complete; but then it was too late, the King's honour was upon it; it was publiſhed and a day appointed for hearing; yet what preparation that may be to the ſecond grace of pardon, that I know not: but I know, my lords, out of their accuſtom'd favour, will admit you not only to your defence concerning that that hath been charged; but to extenuate your fault by any ſubmiſſion that now God ſhall put into your mind to make.

THE

CHARGE

GIVEN BY

Sir *FRANCIS BACON*,

His MAJESTY'S Attorney-General,

Againſt Mr. *Oliver St. John*, for ſcandalizing and traducing in the publick ſeſſions, letters ſent from the lords of the council touching the benevolence.

MY lords, I ſhall inform you *ore tenus*, againſt this gentleman Mr. *I. S.* A gentleman, as it ſeems, of an ancient houſe and name. But for the preſent, I can think of him by no other name than the name of a great offender. The nature and quality of his offence, in ſum, is this. This gentleman hath, upon advice, not ſuddenly by his pen, nor by the ſlip of his tongue; not privately, or in a corner, but publickly, as it were to the face of the King's miniſters and juſtices, ſlandered and traduced the King our Sovereign,

Sovereign, the law of the land, the parliament, and infinite particulars of his Majesty's worthy and loving subjects. Nay, the slander is of that nature, that it may seem to interest the people in grief and discontent against the state; whence might have ensued matter of murmur and sedition. So that it is not a simple slander, but a seditious slander, like to that the poet speaketh of,

———*Calamoſque armare veneno.*

A venomous dart that hath both iron and poison.

To open to your lordships the true state of this offence, I will set before you, first the occasion whereupon Mr. *I. S.* wrought: then the offence it self in his own words: and lastly, the points of his charge.

My lords, you may remember that there was the last parliament an expectation to have had the King supplied with treasure, although the event failed. Herein it is not fit for me to give opinion of an house of parliament, but I will give testimony of truth in all places. I served in the lower house, and I observed somewhat. This I do affirm, that I never could perceive but that there was in that house a general disposition to give, and to give largely. The clocks in the house perchance might differ; some went too fast, some went too slow; but the disposition to give was general: so that I think I may truly say, *solo tempore lapsus amor.*

This accident happening thus, besides expectation, it stirred up, and awaked in divers of his Majesty's worthy servants and subjects of the clergy, the nobility, the court, and others here near at hand, an affection loving and chearful; to present the King some with plate, some with money, as free-will offerings, (a thing that God Almighty loves a chearful giver: what an evil doth I know not.) And, my lords, let me speak it plainly unto you: God forbid any body should be so wretched as to think that the obligation of love and duty, from the subject to the King, should be joint and not several. No, my lords, it is both. The subject petitioneth to the King in parliament. He petitioneth likewise out of parliament. The King on the other side gives graces to the subjects in parliament: he gives them likewise, and poureth them upon his people out of parliament; and so no doubt the subject may give to the King in parliament, and out of parliament. It is true the parliament is *intercursus magnus.* The great intercourse and main current of graces, and donatives from the King to the people, from the people to the King; yet parliaments are held but at certain times: whereas the passages are always open for particulars; even as you see great rivers have their tides: but particular springs and fountains run continually.

To proceed therefore: As the occasion (which was the failing of supply by parliament) did awake the love and benevolence of those that were at hand to give; so it was apprehended and thought fit by my lords of the council to make a proof whether the occasion and example both, would not awake those in the country of the better sort to follow. Whereupon, their lordships devised and directed letters unto the sheriffs and justices, which declared what was done here above, and wished that the country might be moved, especially men of value.

Now, my lords, I beseech you give me favour and attention to set forth and observe unto you five points: (I will number them, because other men may note them; and I will but touch them, because they shall not be drowned or lost in discourse,) which I hold worthy the observation, for the honour of the state and confusion of slanders; whereby it will appear most evidently

what

what care was taken, that that which was then done might not have the effect, no nor the ſhew, no nor ſo much as the ſhadow of a tax; and that it was ſo far from breeding or bringing in any ill precedent or example, as contrariwiſe it is a corrective that doth correct and allay the harſhneſs and danger of former examples.

THE firſt is, that what was done was done immediately after ſuch a parliament, as made general profeſſion to give, and was interrupted by accident; ſo as you may truly and juſtly eſteem it, *tanquam poſthuma proles parliamenti*, as an after-child of the parliament, and in purſuit (in ſome ſmall meaſure) of the firm intent of a parliament paſt. You may take it alſo if you will, as an advance or proviſional help until a future parliament; or as a gratification ſimply without any relation to a parliament; you can no ways take it amiſs.

THE ſecond is, that it wrought upon example as a thing not deviſed or projected, or required; no nor ſo much as recommended until many that were never moved nor dealt with, *ex mero motu*, had freely and frankly ſent in their preſents. So that the letters were rather like letters of news, what was done at *London*, than otherwiſe: and we know *exempla ducunt, non trahunt*; examples they do but lead, they do not draw nor drive.

THE third is, that it was not done by commiſſion under the great ſeal; a thing warranted by a multitude of precedents, both ancient, and of late time, as you ſhall hear anon, and no doubt warranted by law: ſo that the commiſſions be of that ſtyle and tenour, as that as they be to move and not to levy: but this was done by letters of the council, and no higher hand or form.

THE fourth is, that theſe letters had no manner of ſhew of any binding act of ſtate: for they contain not any ſpecial frame or direction how the buſineſs ſhould be managed; but were written as upon truſt, leaving the matter wholly to the induſtry and confidence of thoſe in the country: ſo that it was an *abſque compoto*; ſuch a form of letter as no man could fitly be called to account upon.

THE fifth and laſt point is, that the whole carriage of the buſineſs had no circumſtance compulſory. There was no proportion or rate ſet down not ſo much as by way of a wiſh; there was no menace of any that ſhould deny; no reproof of any that did deny; no certifying of the names of any that had denied. Indeed, if men could not content themſelves to deny, but that they muſt cenſure and inveigh, nor to excuſe themſelves but they muſt accuſe the ſtate, that is another caſe. But I ſay, for denying, no man was apprehended, no nor noted. So that I verily think, that there is none ſo ſubtil a diſputer in the controverſy of *liberum arbitrium*, that can with all his diſtinctions faſten or carp upon the act, but that there was free-will in it.

I CONCLUDE therefore, my lords, that this was a true and pure benevolence; not an impoſition called a benevolence, which the ſtatute ſpeaks of; as you ſhall hear by one of my fellows. There is a great difference I tell you (though *Pilate* would not ſee it) between *Rex Judaeorum*, and *ſe dicens Regem Judaeorum*. And there is a great difference between a benevolence and an exaction called a benevolence, which the Duke of *Buckingham* ſpeaks of in his oration to the city; and defineth it to be not what the ſubject of his good will would give, but what the King of his good will would take. But this, I ſay, was a benevolence wherein every man had a prince's prerogative, a negative voice; and this word (*excuſe moy*) was a plea peremptory. And therefore I do wonder how Mr. *I. S.* could foul or trouble ſo

clear

clear a fountain; certainly it was but his own bitterneſs and unſound humours.

Now to the particular charge amongſt other countries, theſe letters of the lords came to the juſtices of *D——ſhire*, who ſignified the contents thereof, and gave directions and appointments for meetings concerning the buſineſs, to ſeveral towns and places within that county: and amongſt the reſt, notice was given unto the town of *A*. The mayor of *A* conceiving that this Mr. *I. S.* (being a principal perſon, and a dweller in that town) was a man likely to give both money and good example, dealt with him to know his mind: He intending (as it ſeems) to play prizes, would give no anſwer to the mayor in private, but would take time. The next day then being an appointment of the juſtices to meet, he takes occaſion, or pretends occaſion to be abſent, becauſe he would bring his papers upon the ſtage: and thereupon takes pen in hand, and inſtead of excuſing himſelf, ſits down and contriveth a ſeditious and libellous accuſation againſt the King and ſtate, which your lordſhips ſhall now hear, and ſends it to the mayor: and withal, becauſe the feather of his quill might fly abroad, he gives authority to the mayor to impart it to the juſtices, if he ſo thought good. And now, my lords, becauſe I will not miſtake or miſ-repeat, you ſhall hear the ſeditious libel in the proper terms and words thereof.

Here the papers were read.

My lords, I know this paper offends your ears much, and the ears of any good ſubject; and ſorry I am that the times ſhould produce offences of this nature: but ſince they do, I would be more ſorry they ſhould be paſſed without ſevere puniſhment: *Non tradite factum*, (as the verſe ſays, altered a little) *aut ſi tradatis, facti quoque tradite poenam.* If any man have a mind to diſcourſe of the fact, let him likewiſe diſcourſe of the puniſhment of the fact.

In this writing, my lords, there appears a monſter with four heads, of the progeny of him that is the father of lyes, and takes his name from ſlander.

The firſt is a wicked and ſeditious ſlander; or, (if I ſhall uſe the Scripture phraſe) a blaſpheming of the King himſelf; ſetting him forth for a Prince perjured in the great and ſolemn oath of his coronation, which is as it were the knot of the diadem; a Prince that ſhould be a violator and infringer of the liberties, laws, and cuſtoms of the kingdom; a mark for an *Henry* the Fourth; a match for a *Richard* the Second.

The ſecond is a ſlander and falſification, and wreſting of the law of the land groſs and palpable: it is truly ſaid by a *Civilian*, *Tortura legum peſſima*, the torture of laws is worſe than the torture of men.

The third is a ſlander and falſe charge of the parliament, that they had denied to give to the King; a point of notorious untruth.

And the laſt is a ſlander and taunting of an infinite number of the King's loving ſubjects, that have given towards this benevolence and free contribution; charging them as acceſſary and co-adjutors to the King's perjury. Nay, you leave us not there, but you take upon you a pontifical habit, and couple your ſlander with a curſe; but thanks be to God, we have learned ſufficiently out of the Scripture, that as the bird flies away, ſo the cauſeleſs curſe ſhall not come.

For the firſt of theſe, which concerns the King, I have taken to my ſelf the opening and aggravation thereof; the other three I have diſtributed to my fellows.

3

My lords, I cannot but enter into this part with ſome wonder and aſtoniſhment, how it ſhould come into the heart of a ſubject of *England* to vapour forth ſuch a wicked and venomous ſlander againſt the King, whoſe goodneſs and grace is comparable (if not incomparable) unto any of the King's progenitors. This therefore gives me a juſt and neceſſary occaſion to do two things: The one, to make ſome repreſentation of his Majeſty; ſuch as truly he is found to be in his government, which Mr. *I. S.* chargeth with violation of laws and liberties: The other, to ſearch and open the depth of Mr. *I. S.* his offence. Both which I will do briefly; becauſe the one, I cannot expreſs ſufficiently; and the other, I will not preſs too far.

My lords, I mean to make no panegyrick or laudative; the King delights not in it, neither am I fit for it: but if it were but a counſellor or nobleman, whoſe name had ſuffered, and were to receive ſome kind of reparation in this high court, I would do him that duty as not to paſs his merits and juſt attributes (eſpecially ſuch as are limited with the preſent caſe) in ſilence: for it is fit to burn incenſe where evil odours have been caſt and raiſed. Is it ſo that King *James* ſhall be ſaid to be a violator of the liberties, laws, and cuſtoms of his kingdoms? Or is he not rather a noble and conſtant protector and conſervator of them all? I conceive this conſiſteth in maintaining religion, and the true church; in maintaining the laws of the kingdom, which is the ſubject's birth-right; in temperate uſe of the prerogative; in due and free adminiſtration of juſtice and conſervation of the peace of the land.

For religion, we muſt ever acknowledge in the firſt place, that we have a King that is the principal conſervator of true religion through the Chriſtian world. He hath maintained it not only with ſcepter and ſword, but likewiſe by his pen; wherein alſo he is potent.

He hath awaked and re-authorized the whole party of the reformed religion throughout *Europe*; which through the inſolency and divers artifices and inchantments of the adverſe part was grown a little dull and dejected: He hath ſummoned the fraternity of Kings to enfranchiſe themſelves from the uſurpation of the See of *Rome:* He hath made himſelf a mark of contradiction for it.

Neither can I omit, when I ſpeak of religion, to remember that excellent act of his Majeſty; which though it were done in a foreign country, yet the church of God is one, and the contagion of theſe things will ſoon paſs ſeas and lands: I mean, in his conſtant and holy proceeding againſt the heretick *Vorſtius*, whom (being ready to enter into the chair, and there to have authorized one of the moſt peſtilent and heatheniſh hereſies that ever was begun) his Majeſty by his conſtant oppoſition diſmounted and pulled down. And I am perſuaded there ſits in this court one whom God doth the rather bleſs for being his Majeſty's inſtrument in that ſervice.

I cannot remember religion and the church, but I muſt think of the ſeed-plots of the ſame, which are the univerſities. His Majeſty, as for learning amongſt Kings, he is incomparable in his perſon; ſo likewiſe hath he been in his government a benign or benevolent planet towards learning: By whoſe influence thoſe nurſeries and gardens of learning (the univerſities) were never more in flower nor fruit.

For the maintaining of the laws, which is the hedge and fence about the liberty of the ſubject, I may truly affirm it was never in better repair. He doth concur with the votes of the nobles; *Nolumus leges Angliae mutare.* He is an enemy of innovation. Neither doth the univerſality of his own knowledge carry him to neglect or paſs over the very forms of the laws of the

the land. Neither was there ever King, I am perſuaded, that did conſult ſo oft with his judges, as my lords that ſit here know well. The judges are a kind of council of the King's by oath and ancient inſtitution; but he uſeth them ſo indeed: he confers regularly with them upon their returns from their viſitations and circuits: he gives them liberty, both to inform him, and to debate matters with him; and in the fall and concluſion commonly relies on their opinions.

As for the uſe of the prerogative, it runs within the ancient chanels and banks: ſome things that were conceived to be in ſome proclamations, commiſſions, and patents, as overflows, have been by his wiſdom and care reduced; whereby, no doubt, the main chanel of his prerogative is ſo much the ſtronger. For evermore overflows do hurt the chanel.

As for adminiſtration of juſtice between party and party, I pray obſerve theſe points. There is no news of great ſeal or ſignet that flies abroad for countenance or delay of cauſes; protections rarely granted, and only upon great ground, or by conſent. My lords here of the council and the King himſelf meddled not (as hath been uſed in former times) with matters of *meum* and *tuum*, except they have apparent mixture with matters of eſtate, but leave them to the King's courts of law or equity. And for mercy and grace (without which there is no ſtanding before juſtice) we ſee the King now hath reigned twelve years in his white robe, without almoſt any aſperſion of the crimſon dye of blood. There ſits my Lord *Hobart* that ſerved attorney ſeven years. I ſerved with him. We were ſo happy, as there paſſed not through our hands any one arraignment for treaſon; and but one for any capital offence, which was that of the Lord *Sanquhar*; the nobleſt piece of juſtice (one of them) that ever came forth in any King's time.

As for penal laws, which lie as ſnares upon the ſubjects, and which were as a *nemo ſcit* to King *Henry* VII; it yields a revenue that will ſcarce pay for the parchment of the King's records at *Weſtminſter*.

And laſtly for peace, we ſee manifeſtly his Majeſty bears ſome reſemblance of that great name, a Prince of peace: he hath preſerved his ſubjects during his reign in peace, both within and without. For the peace with ſtates abroad, we have it *uſque ad ſatietatem*: and for peace in the lawyers phraſe, which count treſpaſſes and forces and riots to be *contra pacem*; let me give your lordſhips this token or taſte, that this court where they ſhould appear had never leſs to do. And certainly there is no better ſign of *omnia bene*, than when this court is in a ſtill.

But, my lords, this is a ſea of matter; and therefore I muſt give it over, and conclude, that there was never King reigned in this nation that did better keep covenant in preſerving the liberties and procuring the good of his people: ſo that I muſt need ſay for the ſubjects of *England*,

O fortunatos nimium ſua ſi bona norint;

As no doubt they do both know and acknowledge it; whatſoever a few turbulent diſcourſes may through the lenity of the time take boldneſs to ſpeak.

And as for this particular, touching the benevolence, wherein Mr. *I. S.* doth aſſign this breach of covenant, I leave it to others to tell you what the King may do, or what other Kings have done; but I have told what our King and my lords have done: which I ſay, and ſay again, is ſo far from introducing a new precedent, as it doth rather correct and mollify and qualify former precedents.

Now

Now, Mr. *I. S.* let me tell you your fault in few words: for that I am perſuaded you ſee it already, though I woo no man's repentance; but I ſhall as much as in me is, cheriſh it where I find it. Your offence hath three parts knit together:

YOUR ſlander,

YOUR menace, and

YOUR compariſon.

FOR your ſlander, it is no leſs than that the King is perjured in his coronation oath. No greater offence than perjury; no greater oath than that of a coronation. I leave it; it is too great to aggravate.

YOUR menace, that if there were a *Bullingbroke*, or I cannot tell what, there were matter for him, is a very ſeditious paſſage. You know well, that howſoever *Henry* the Fourth's act by a ſecret providence of God prevailed, yet it was but an uſurpation; and if it were poſſible for ſuch a one to be this day, (wherewith it ſeems your dreams are troubled) I do not doubt his end would be upon the block; and that he would ſooner have the ravens ſit upon his head at *London-Bridge*, than the crown at *Weſtminſter*. And it is not your interlacing of your God forbid, that will ſalve theſe ſeditious ſpeeches: neither could it be a fore-warning, becauſe the matter was paſt and not revocable, but a very ſtirring up and incenſing of the people. If I ſhould ſay to you, (for example) if theſe times were like ſome former times, of King *Henry* VIII. or ſome other times, which God forbid, Mr. *I. S.* it would coſt you your life; I am ſure you would not think this to be a gentle warning, but rather that I inceaſed the court againſt you.

AND for your compariſon with *Richard* II, I ſee you follow the example of them that brought him upon the ſtage, and into print in Queen *Elizabeth*'s time, a moſt prudent and admirable Queen. But let me intreat you, that when you will ſpeak of Queen *Elizabeth* or King *James*; you would compare them to King *Henry* VII. or King *Edward* I. or ſome other parallels to which they are alike. And this I would wiſh both you and all to take heed of, how you ſpeak ſeditious matter in parables, or by tropes or examples. There is a thing in an indictment called an innuendo; you muſt beware how you beckon or make ſigns upon the King in a dangerous ſenſe; but I will contain my ſelf and preſs this no farther. I may hold you for turbulent or preſumptuous; but I hope you are not diſloyal: you are graciouſly and mercifully dealt with. And therefore having now opened to my lords, and (as I think) to your own heart and conſcience, the principal part of your offence, (which concerns the King) I leave the reſt, which concerns the law, parliament, and the ſubjects that have given, to Mr. Serjeant and Mr. Sollicitor.

THE

THE

CHARGE

OF

OWEN

Indicted of High Treaſon in the KING'S BENCH;

BY

Sir *FRANCIS BACON*, Kt.

His MAJESTY's Attorney-General.

THE treaſon wherewith this man ſtandeth charged, is for the kind and nature of it ancient, as ancient as there is any law of *England*; but in the particular, late and upſtart: and again, in the manner and boldneſs of the preſent caſe, new and unheard of till this man. Of what mind he is now, I know not; but I take him as he was, and as he ſtandeth charged. For high treaſon is not written in ice; that when the body relenteth, the impreſſion ſhould go away.

IN this cauſe the evidence it ſelf will ſpend little time: time therefore will be beſt ſpent in opening fully the nature of this treaſon, with the circumſtances thereof; becauſe the example is more than the man. I think good therefore by way of inducement and declaration in this cauſe to open unto the court, jury and hearers, five things.

THE firſt is the clemency of the King; becauſe it is news, and a kind of rarity to have a proceeding in this place upon treaſon: and perhaps it may be marvelled by ſome, why after ſo long an intermiſſion it ſhould light upon this fellow, being a perſon but contemptible, and a kind of venomous fly, and a hang-by of the ſeminaries.

THE ſecond is, the nature of this treaſon, as concerning the fact, which of all kinds of compaſſing the King's death I hold to be the moſt perilous, and as much differing from other conſpiracies as the lifting up of a thouſand hands againſt the King (like the giant *Briareus*) differs from lifting up one or a few hands.

THE third point that I will ſpeak unto is the doctrine or opinion, which is the ground of this treaſon; wherein I will not argue or ſpeak like a divine or ſcholar, but as a man bred in a civil life: and to ſpeak plainly, I hold the opinion to be ſuch that deſerveth rather deteſtation than conteſtation.

THE fourth point is the degree of this man's offence, which is more preſumptuous than I have known any other to have fallen into in this kind, and hath a greater overflow of malice and treaſon.

AND fifthly, I will remove ſomewhat that may ſeem to qualify and extenuate this man's offence; in that he hath not affirmed ſimply that it is lawful to kill the King, but conditionally; that if the King be excommunicate, it is lawful to kill him, which maketh little difference either in law or peril.

For the King's clemency, I have ſaid it of late upon a good occaſion, and I ſtill ſpeak it with comfort: I have now ſerved his Majeſty's ſollicitor and attorney eight years and better; yet this is the firſt time that ever I gave in evidence againſt a traytor at this bar or any other. There hath not wanted matter in that party of the ſubjects whence this kind of offence floweth to irritate the King: he hath been irritated by the powder of treaſon, which might have turned judgment into fury. He hath been irritated by wicked and monſtrous libels; irritated by a general inſolency and preſumption in the Papiſts throughout the land; and yet I ſee his Majeſty keepeth *Caeſar's* rule: *Nil malo, quam eos eſſe ſimiles ſui, & me mei.* He leaveth them to be like themſelves; and he remaineth like himſelf, and ſtriveth to overcome evil with goodneſs. A ſtrange thing, bloody opinions, bloody doctrines, bloody examples, and yet the government ſtill unſtained with blood. As for this *Owen* that is brought in queſtion, though his perſon be in his condition contemptible; yet we ſee by miſerable examples, that theſe wretches which are but the ſcum of the earth, have been able to ſtir earthquakes by murthering of princes: and if it were in caſe of contagion, (as this is a contagion of the heart and ſoul) a raſcal may bring in a plague into the city as well as a great man: ſo it is not the perſon, but the matter that is to be conſidered.

For the treaſon itſelf, which is the ſecond point, my deſire is to open it in the depth thereof, if it were poſſible; but it is bottomleſs: and ſo the civil law ſaith, *conjurationes omnium proditionum odioſiſſimae & perniciоſiſſimae.* Againſt hoſtile invaſions and the adherence of ſubjects to enemies, Kings can arm. Rebellions muſt go over the bodies of many good ſubjects before they can hurt the King: but conſpiracies againſt the perſons of Kings are like thunder-bolts that ſtrike upon the ſudden, hardly to be avoided. *Major metus a ſingulis* (ſaith he) *quam ab univerſis.* There is no preparation againſt them: and that preparation, which may be of guard or cuſtody, is a perpetual miſery. And therefore they that have written of the privileges of ambaſſadors and of the amplitude of ſafe-conducts have defined, that if an ambaſſador or a man that cometh in upon the higheſt ſafe-conducts do practiſe matter of ſedition in a ſtate, yet by the law of nations he ought to be remanded; but if he conſpire againſt the life of a prince by violence or poiſon, he is to be juſticed: *Quia odium eſt omni privilegio majus.* Nay, even amongſt enemies, and in the moſt deadly wars, yet nevertheleſs conſpiracy and aſſaſſination of princes hath been accounted villanous and execrable.

The manners of conſpiring and compaſſing the King's death are many: but it is moſt apparent, that amongſt all the reſt this ſurmounteth. Firſt, becauſe it is grounded upon pretenced religion; which is a trumpet that inflameth the heart and powers of a man with daring and reſolution more than any thing elſe. Secondly, it is the hardeſt to be avoided: for when a particular conſpiracy is plotted or attempted againſt a King by ſome one or ſome few conſpirators, it meets with a number of impediments. Commonly he that hath the head to deviſe it, hath not the heart to undertake it: and the perſon that is uſed, ſometimes faileth in courage; ſometimes faileth in opportunity; ſometimes is touched with remorſe. But to publiſh and maintain, that it may be lawful for any man living to attempt the life of a King, this doctrine is a venomous ſop; or as a legion of malign ſpirits; or an univerſal temptation doth enter at once into the hearts of all that are any way prepared, or of any prediſpoſition to be traytors: ſo that whatſoever faileth in any one, is ſupplied in many. If one man faint, another will dare: if one man hath not the opportunity, another hath: if one man relent, another will be deſperate. And

thirdly,

thirdly, particular conſpiracies have their periods of time, within which, if they be not taken, they vaniſh; but this is endleſs, and importeth perpetuity of ſpringing conſpiracies. And ſo much concerning the nature of the fact.

For the third point, which is the doctrine; that upon an excommunication of the Pope, with ſentence of depoſing, a King by any ſon of *Adam* may be ſlaughtered; and that it is juſtice and no murther; and that their ſubjects are abſolved of their allegiance, and the Kings themſelves expoſed to ſpoil and prey. I ſaid before, that I would not argue the ſubtilty of the queſtion: it is rather to be ſpoken to by way of accuſation of the opinion as impious, than by way of diſpute of it as doubtful. Nay, I ſay it deſerveth rather ſome holy war or league amongſt all Chriſtian princes of either religion for the extirpating and razing of the opinion, and the authors thereof, from the face of the earth, than the ſtyle of pen or ſpeech. Therefore in this kind I will ſpeak to it a few words, and not otherwiſe. Nay, I proteſt, if I were a Papiſt I ſhould ſay as much: nay, I ſhould ſpeak it perhaps with more indignation and feeling. For this horrible opinion is our advantage, and it is their reproach, and will be their ruin.

This monſter of opinion is to be accuſed of three moſt evident and moſt miſerable ſlanders.

First, Of the ſlander it bringeth to the Chriſtian faith, being a plain plantation of irreligion and atheiſm.

Secondly, The ſubverſion which it introduceth into all policy and government.

Thirdly, The great calamity it bringeth upon Papiſts themſelves; of which the more moderate ſort as men miſ-led are to be pitied.

For the firſt, if a man doth viſit the foul and polluted opinions, cuſtoms, or practices of Heatheniſm, Mahometiſm, and Hereſy, he ſhall find they do not attain to this height. Take the examples of damnable memory amongſt the Heathen. The proſcriptions in *Rome* of *Sylla*, and afterwards of the *Triumvirs*, what were they? They were but of a finite number of perſons, and thoſe not many that were expoſed unto any man's ſword. But what is that to the proſcribing of a King, and all that ſhall take his part? And what was the reward of a ſoldier that amongſt them killed one of the proſcribed? A ſmall piece of money. But what is now the reward of one that ſhall kill a King? The kingdom of heaven. The cuſtom among the Heathen that was moſt ſcandalized was, that ſometimes the prieſt ſacrificed men; but yet you ſhall not read of any prieſthood that ſacrificed Kings.

The Mahometans make it a part of their religion to propagate their ſect by the ſword; but yet ſtill by honourable wars, never by villanies and ſecret murthers. Nay, I find that the *Saracen* prince, of whom the name of the aſſaſſins is derived, which had divers votaries at commandment, which he ſent and employed to the killing of divers princes in the eaſt, (by one of whom *Amurath* the firſt was ſlain, and *Edward* the firſt of *England* was wounded) was put down and rooted out by a common conſent of the Mahometan princes.

The Anabaptiſts (it is true) come neareſt. For they profeſs the pulling down of magiſtrates; and they can chaunt the pſalm, *To bind their Kings in chains, and their nobles in fetters of iron.* This is the glory of the ſaints, much like the temporal authority that the Pope challengeth over princes. But this is the difference, that that is a furious and fanatical fury, and this is a ſad and ſolemn miſchief: he *imagineth miſchief as a law*; a law like miſchief.

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As for the defence which they do make, it doth aggravate the ſin, and turneth it from a cruelty towards man to a blaſphemy towards God. For to ſay that all this is *in ordine ad ſpirituale*, and to a good end, and for the ſalvation of ſouls, it is directly to make God author of evil, and to draw him into the likeneſs of the prince of darkneſs; and to ſay with thoſe that Saint *Paul* ſpeaketh of, *Let us do evil that good may come thereof.* Of whom the apoſtle ſaith definitively, *that their damnation is juſt.*

For the deſtroying of government univerſally, it is moſt evident, that it is not the caſe of proteſtant princes only, but of catholick princes likewiſe; as the King hath excellently ſet forth. Nay, it is not the caſe of princes only, but of all ſubjects and private perſons. For touching princes, let hiſtory be peruſed, what hath been the cauſes of excommunication; and namely, this tumour of it, (the depoſing of Kings;) it hath not been for hereſy and ſchiſm alone, but for collation and inveſtitures of biſhopricks and benefices, intruding upon eccleſiaſtical poſſeſſions, violating of any eccleſiaſtical perſon or liberty. Nay, generally they maintain it, that it may be for any ſin: ſo that the difference wherein their doctors vary, that ſome hold that the Pope hath his temporal power immediately, and others but *in ordine ad ſpirituale*, is but a deluſion and an abuſe. For all cometh to one. What is there that may not be made ſpiritual by conſequence; eſpecially when he that giveth the ſentence may make the caſe? and accordingly hath the miſerable experience followed. For this murthering of Kings hath been put in practice, as well againſt papiſt Kings as proteſtant: Save that it hath pleaſed God ſo to guide it by his admirable providence; as the attempts upon papiſt princes have been executed, and the attempts upon proteſtant princes have failed, except that of the Prince of *Orange:* And not that neither, until ſuch time as he had joined too faſt with the Duke of *Anjou* and the papiſts.———

The reſt is wanting.

THE CHARGE OF

Sir *FRANCIS BACON*, the KING's Attorney-General, againſt Mr. *Lumſden*, Sir *John Wentworth*, and Sir *John Holles*, for ſcandal and traducing of the King's juſtice in the proceedings againſt *Weſton*, in the Star-Chamber, 10 *Novemb.* 1615.

THE offence wherewith I ſhall charge the three offenders at the bar, is a miſdemeanor of a high nature, tending to the defacing and ſcandal of juſtice in a great cauſe capital. The particular charge is this:

The

THE King amongſt many his princely virtues is known to excel in that proper virtue of the imperial throne, which is juſtice. It is a royal virtue which doth employ the other three cardinal virtues in her ſervice. Wiſdom to diſcover, and diſcern nocent or innocent: fortitude to proſecute and execute: temperance, ſo to carry juſtice as it be not paſſionate in the purſuit, nor confuſed in involving perſons upon light ſuſpicion, nor precipitate in time. For this his Majeſty's virtue of juſtice God hath of late raiſed an occaſion, and erected as it were a ſtage or theatre much to his honour for him, to ſhew it, and act it in the purſuit of the untimely death of Sir *Thomas Overbury*, and therein cleanſing the land from blood. For, my lords, if blood ſpilt pure doth cry to heaven in God's ears, much more blood defiled with poiſon.

THIS great work of his Majeſty's juſtice, the more excellent it is, your lordſhips will ſoon conclude the greater is the offence of any that have ſought to affront it or traduce it. And therefore, before I deſcend unto the charge of theſe offenders, I will ſet before your lordſhips the weight of that which they have ſought to impeach; ſpeaking ſomewhat of the general crime of impoiſonment, and then of the particular circumſtances of this fact upon *Overbury*; and thirdly and chiefly, of the King's great and worthy care and carriage in this buſineſs.

THIS offence of impoiſonment is moſt truly figured in that device or deſcription, which was made of the nature of one of the *Roman* tyrants, that he was *lutum ſanguine maceratum*, mire mingled or cemented with blood: for as it is one of the higheſt offences in guiltineſs, ſo it is the baſeſt of all others in the mind of the offenders. Treaſons, *magnum aliquid ſpectant:* They aim at great things; but this is vile and baſe. I tell your lordſhips what I have noted, that in all God's books, (both of the old and new teſtament) I find examples of all other offences and offenders in the world, but not any one of an impoiſonment or an impoiſoner. I find mention of fear of caſual impoiſonment: when the wild vine was ſhred into the pot, they came complaining in a fearful manner; Maſter *mors in olla*. And I find mention of poiſons of beaſts and ſerpents; *the poiſon of aſps is under their lips*. But I find no example in the book of God of impoiſonment. I have ſometime thought of the words in the pſalm, *let their table be made a ſnare*. Which certainly is moſt true of impoiſonment; for the table, the daily bread, for which we pray, is turned to a deadly ſnare: but I think rather that that was meant of the treachery of friends that were participant of the ſame table.

BUT let us go on. It is an offence, my lords, that hath the two ſpurs of offending; *ſpes perficiendi*, and *ſpes celandi:* It is eaſily committed, and eaſily concealed.

IT is an offence that is *tanquam ſagitta nocte volans*; it is the arrow that flies by night. It diſcerns not whom it hits: for many times the poiſon is laid for one, and the other takes it; as in *Sander*'s caſe, where the poiſoned apple was laid for the mother, and was taken up by the child, and killed the child: and ſo in that notorious caſe, whereupon the ſtatute of 22 *Hen.* VIII. *cap.* 9. was made, where the intent being to poiſon but one or two, poiſon was put into a little veſſel of barm that ſtood in the kitchen of the biſhop of *Rocheſter*'s houſe; of which barm pottage or gruel was made, wherewith ſeventeen of the biſhop's family were poiſoned: nay, divers of the poor that came to the biſhop's gate, and had the broken pottage in alms, were likewiſe poiſoned. And therefore if any man will comfort himſelf or think with himſelf, here is great talk of impoiſonment, I hope I am ſafe; for I have no

enemies; nor I have nothing that any body ſhould long for. Why? That is all one; for he may ſit at table by one for whom poiſon is prepared, and have a drench of his cup, or of his pottage. And ſo, as the poet ſaith, *concidit infelix alieno vulnere*; he may die another man's death. And therefore it was moſt gravely, and judiciouſly, and properly provided by that ſtatute, that impoiſonment ſhould be high treaſon; becauſe whatſoever offence tendeth to the utter ſubverſion and diſſolution of human ſociety, is in the nature of high treaſon.

Lastly, It is an offence that I may truly ſay of it, *non eſt noſtri generis, nec ſanguinis*. It is (thanks be to God) rare in the iſle of *Britain:* it is neither of our country, nor of our church; you may find it in *Rome* or *Italy*. There is a region, or perhaps a religion for it: and if it ſhould come amongſt us, certainly it were better living in a wilderneſs, than in a court.

For the particular fact upon *Overbury*. Firſt, for the perſon of Sir *Thomas Overbury:* I knew the gentleman. It is true, his mind was great, but it moved not in any good order; yet certainly it did commonly fly at good things; and the greateſt fault that I ever heard by him, was, that he made his friend his idol. But I leave him as Sir *Thomas Overbury*.

But take him as he was the King's priſoner in the *Tower*; and then ſee how the caſe ſtands. In that place the ſtate is as it were reſpondent to make good the body of a priſoner. And if any thing happen to him there, it may (though not in this caſe, yet in ſome others) make an aſperſion and reflection upon the ſtate it ſelf. For the perſon is utterly out of his own defence; his own care and providence can ſerve him nothing. He is in cuſtody and preſervation of law; and we have a maxim in our law, (as my lords the judges know) that when a ſtate is in preſervation of law, nothing can deſtroy it, or hurt it. And God forbid but the like ſhould be for the perſons of thoſe that are in cuſtody of law; and therefore this was a circumſtance of great aggravation.

Lastly, To have a man chaſed to death in ſuch manner (as it appears now by matter of record; for other privacy of the cauſe I know not) by poiſon after poiſon, firſt roſeaker, then arſenick, then mercury ſublimate, then ſublimate again; it is a thing would aſtoniſh man's nature to hear it. The poets feign, that the Furies had whips, that they were corded with poiſonous ſnakes; and a man would think that this were the very caſe, to have a man tied to a poſt, and to ſcourge him to death with ſnakes: for ſo may truly be termed diverſity of poiſons.

Now I will come to that which is the principal; that is, his Majeſty's princely, yea, and as I may truly term it, ſacred proceeding in this cauſe. Wherein I will firſt ſpeak of the temper of his juſtice, and then of the ſtrength thereof.

First, It pleaſed my Lord Chief Juſtice to let me know, (that which I heard with great comfort) which was the charge that his Majeſty gave to himſelf firſt, and afterwards to the commiſſioners in this caſe, worthy certainly to be written in letters of gold, wherein his Majeſty did forerank and make it his prime direction, that it ſhould be carried without touch, to any that was innocent: nay more, not only without impeachment, but without aſperſion: which was a moſt noble and princely caution from his Majeſty; for men's reputations are tender things, and ought to be like Chriſt's coat, without ſeam. And it was the more to be reſpected in this caſe, becauſe it met with two great perſons; a nobleman that his Majeſty had favoured and advanced, and his lady being of a great and honourable houſe: though I think it be true, that

that the writers ſay, that there is no pomegranate ſo fair or ſo ſound, but may have a periſhed kernel. Nay, I ſee plainly, that in thoſe excellent papers of his Majeſty's own hand writing, being as ſo many beams of juſtice iſſuing from that virtue which doth ſhine in him; I ſay, I ſee it was ſo evenly carried without prejudice, (whether it were a true accuſation of the one part, or a practice of a falſe accuſation on the other) as ſhewed plainly that his Majeſty's judgment was *tanquam tabula raſa*, as a clean pair of tables, and his ear *tanquam janua aperta*, as a gate not ſide open but wide open to truth, as it ſhould be by little and little diſcovered. Nay, I ſee plainly, that at the firſt (till farther light did break forth) his Majeſty was little moved with the firſt tale, which he vouchſafeth not ſo much as the name of a tale; but calleth it a rumour, which is an heedleſs tale.

As for the ſtrength or reſolution of his Majeſty's juſtice, I muſt tell your lordſhips plainly; I do not marvel to ſee Kings thunder out juſtice in caſes of treaſon, when they are touched themſelves; and that they are *vindices doloris proprii:* but that a King ſhould *pro amore juſtitiae* only, contrary to the tide of his own affection, for the preſervation of his people, take ſuch care of a cauſe of juſtice, that is rare and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this kingdom, nor in any other kingdom, the blood of a private gentleman vindicated, *cum tanto motu regni*, or to ſay better, *cum tanto plauſu regni*. If it had concerned the King or Prince, there could not have been greater nor better commiſſioners to examine it. The term hath been almoſt turned into a *juſtitium*, or vacancy; the people themſelves being more willing to be lookers on in this buſineſs, than to follow their own. There hath been no care of diſcovery omitted, no moment of time loſt. And therefore I will conclude this part with the ſaying of *Solomon*, *gloria Dei celare rem, & gloria Regis ſcrutari rem*. And his Majeſty's honour is much the greater for that he hath ſhewed to the world in this buſineſs as it hath relation to my Lord of *Somerſet*, (whoſe caſe in no ſort I do prejudge, being ignorant of the ſecrets of the cauſe, but taking him as the law takes him hitherto, for a ſuſpect;) I ſay, the King hath to his great honour ſhewed, that were any man in ſuch a caſe of blood, as the ſignet upon his right hand, (as the Scripture ſays) yet would he pull him off.

Now will I come to the particular charge of theſe gentlemen whoſe qualities and perſons I reſpect and love; for they are all my particular friends: But now I can only do this duty of a friend to them, to make them know their fault to the full.

And therefore, firſt, I will by way of narrative declare to your lordſhips the fact, with the occaſion of it; then you ſhall have their confeſſions read, upon which you are to proceed, together with ſome collateral teſtimonies by way of aggravation: and laſtly, I will note and obſerve to your lordſhips, the material points which I do inſiſt upon for their charge, and ſo leave them to their anſwer. And this I will do very briefly, for the caſe is not perplexed.

That wretched man *Weſton*, who was the actor or mechanical party in this impoiſonment, at the firſt day being indicted by a very ſubſtantial jury of ſelected citizens, to the number of nineteen, who found *billa vera*, yet nevertheleſs at the firſt ſtood mute: but after ſome days intermiſſion, it pleaſed God to caſt out the dumb devil, and that he did put himſelf upon his trial; and was by a jury alſo of great value, upon his confeſſion, and other teſtimonies, found guilty: ſo as thirty-one ſufficient jurors have paſſed upon him.

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Whereupon judgment and execution was awarded againſt him. After this, being in preparation for another world, he ſent for Sir *Thomas Overbury*'s father, and falling down upon his knees, with great remorſe and compunction, asked him forgiveneſs. Afterwards, again, of his own motion, deſired to have his like prayer of forgiveneſs recommended to his mother, who was abſent. And at both times, out of the abundance of his heart, confeſſed that he was to die juſtly, and that he was worthy of death. And after again at his execution (which is a kind of ſealing-time of confeſſion) even at the point of death, (although there were tempters about him, as you ſhall hear by and by) yet he did again confirm publickly, that his examinations were true, and that he had been juſtly and honourably dealt with. Here is the narrative, which induceth the charge. The charge it ſelf, is this.

M. L. Whose offence ſtands alone ſingle (the offence of the other two being in conſort; and yet all three meeting in their end and center, which was to interrupt or deface this excellent piece of juſtice:) *M. L.* I ſay, mean while, between *Weſton*'s ſtanding mute and his trial, takes upon him to make a moſt falſe, odious, and libellous relation, containing as many untruths, as lines, and ſets it down in writing with his own hand, and delivers it to Mr. *Henry Gibb*, of the bed-chamber, to be put into the King's hand; in which writing he doth falſify and pervert all that was done the firſt day at the arraignment of *Weſton*; turning the pike and point of his imputations, principally upon my Lord Chief Juſtice of *England*; whoſe name (thus occurring) I cannot paſs by, and yet I cannot ſkill to flatter. But this I will ſay of him, and I would ſay as much to ages, if I ſhould write a ſtory; that never man's perſon and his place were better met in a buſineſs, than my Lord *Coke* and my Lord Chief Juſtice, in the cauſe of *Overbury*.

Now, my lords, in this offence of *M. L.* for the particulars of theſe ſlanderous articles, I will obſerve them unto you when the writings and examinations are read; for I do not love to ſet the gloſs before the text. But in general I note to your lordſhips, firſt, the perſon of *M. L.* I know he is a *Scots* gentleman, and thereby more ignorant of our laws and forms: But I cannot tell whether this doth extenuate his fault in reſpect of ignorance, or aggravate it much, in reſpect of preſumption; that he would meddle in that that he underſtood not: but I doubt it came not out of his quiver; ſome other man's cunning wrought upon this man's boldneſs. Secondly, I may note unto you, the greatneſs of the cauſe, wherein he being a private mean gentleman, did preſume to deal. *M. L.* could not but know to what great and grave commiſſioners the King had committed this cauſe; and that his Majeſty in his wiſdom would expect return of all things from them to whoſe truſt he had committed this buſineſs. For it is the part of commiſſioners, as well to report the buſineſs, as to manage the buſineſs; and then his Majeſty might have been ſure to have had all things well weighed, and truly informed: and therefore it ſhould have been far from *M. L.* to have preſumed to have put forth his hand to ſo high and tender a buſineſs, which was not to be touched but by employed hands. Thirdly, I note to your lordſhips, that this infuſion of a ſlander into a King's ear, is of all forms of libels and ſlanders, the worſt. It is true, that Kings may keep ſecret their informations, and then no man ought to enquire after them, while they are ſhrined in their breaſt. But where a King is pleaſed that a man ſhall anſwer for his falſe information; there, I ſay, the falſe information to a King exceeds in offence the falſe information of any other kind; being a kind (ſince

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we are in matter of poiſon) of impoiſonment of a King's ear. And thus much for the offence of *M. L.*

For the offence of *S. W.* and *H. I.* which I ſaid was in conſort, it was ſhortly this. At the time and place of the execution of *Weſton*, to ſupplant his Chriſtian reſolution, and to ſcandalize the juſtice already paſt, and perhaps to cut off the thread of that which is to come; theſe gentlemen, with others, came mounted on horſeback, and in a ruffling and facing manner, put themſelves forward to re-examine *Weſton* upon queſtions: and what queſtions? Directly croſs to that that had been tried and judged; for what was the point tried? That *Weſton* had poiſoned *Overbury*. What was *S. W.*'s queſtion; whether *Weſton* did poiſon *Overbury* or no? A contradictory directly: *Weſton* anſwered only, that he did him wrong; and turning to the ſheriff, ſaid, You promiſed me I ſhould not be troubled at this time. Nevertheleſs, he preſſed him to anſwer; ſaying he deſired to know it, that he might pray with him. I know not that *S. W.* is an eccleſiaſtick, that he ſhould cut any man from the communion of prayer. And yet for all this vexing of the ſpirit of a poor man, now in the gates of death; *Weſton* nevertheleſs ſtood conſtant, and ſaid, I die not unworthily; my Lord Chief Juſtice hath my mind under my hand, and he is an honourable and juſt judge. This is *S. W.* his offence.

For *H. I.* he was not ſo much a queſtioniſt; but wrought upon the others queſtions, and like a kind of confeſſor, wiſhed him to diſcharge his conſcience, and to ſatisfy the world. What world? I marvel! it was ſure the world at *Tyburn*. For the world at *Guild-Hall*, and the world at *London*, was ſatisfied before; *teſte* the bells that rung. But men have got a faſhion now-a-days, that two or three buſy-bodies will take upon them the name of the world, and broach their own conceits, as if it were a general opinion. Well, what more? When they could not work upon *Weſton*, then *H. I.* in an indignation turned about his horſe (when the other was turning over the ladder) and ſaid, he was ſorry for ſuch a concluſion: that was to have the ſtate honoured or juſtified; but others took and reported his words in another degree: but that I leave, ſeeing it is not confeſſed.

H. I. his offence had another appendix, before this in time; which was that at the day of the verdict given up by the jury, he alſo would needs give his verdict, ſaying openly, that if he were of the jury, he would doubt what to do. Marry (he ſaith) he cannot tell well whether he ſpake this before the jury had given up the verdict, or after; wherein there is little gained. For whether *H. I.* were a pre-juror or a poſt-juror, the one was as to pre-judge the jury, the other as to taint them.

Of the offence of theſe two gentlemen in general, your lordſhips muſt give me leave to ſay, that it is an offence greater and more dangerous than is conceived. I know well that as we have no *Spaniſh* inquiſitions, nor juſtice in a corner; ſo we have no gagging of men's mouths at their death; but that they may ſpeak freely at the laſt hour; but then it muſt come from the free motion of the party, not by temptation of queſtions. The queſtions that are to be aſked, ought to tend to farther revealing of their own or others guiltineſs; but to uſe a queſtion in the nature of a falſe interrogatory, to falſify that which is *res judicata*, is intolerable. For that were to erect a court or commiſſion of review at *Tyburn*, againſt the *King's-Bench* at *Weſtminſter*. And beſides, it is a thing vain and idle: for if they anſwer according to the judgment paſt, it adds no credit; or if it be contrary, it

derogateth nothing: But yet it ſubjecteth the majeſty of juſtice, to popular and vulgar talk and opinion.

My lords, theſe are great and dangerous offences; for if we do not maintain juſtice, juſtice will not maintain us.

But now your lordſhips ſhall hear the examinations themſelves, upon which I ſhall have occaſion to note ſome particular things, *&c.*

THE

CHARGE*,

By way of EVIDENCE,

BY

Sir *FRANCIS BACON*,

His MAJESTY's ATTORNEY-GENERAL,

* Given *May* 24. 1616.

Before the Lord-High-Steward † and the Peers; againſt *Frances* Counteſs of *Somerſet*, concerning the poiſoning of Sir *Thomas Overbury*.

† The Lord Chancellor *Egerton*, Lord *Elleſmere*, and Earl of *Bridgwater*.

IT may pleaſe your grace, my LordHigh Steward of *England*, and you my lords the peers:

I am very glad to hear this unfortunate lady doth take this courſe, to confeſs fully and freely, and thereby to give glory to God and to juſtice. It is (as I may term it) the nobleneſs of an offender to confeſs; and therefore thoſe meaner perſons upon whom juſtice paſſed before, confeſſed not, ſhe doth. I know your lordſhips cannot behold her without compaſſion: many things may move you, her youth, her perſon, her ſex, her noble family; yea, her provocations (if I ſhould enter into the cauſe it ſelf) and furies about her; but chiefly her penitency and confeſſion. But juſtice is the work of this day; the mercy-ſeat was in the inner part of the temple; the throne is publick. But ſince this lady hath by her confeſſion prevented my evidence, and your verdict, and that this day's labour is eaſed; there reſteth in the legal proceeding, but for me to pray that her confeſſion may be recorded, and judgment thereupon.

But becauſe your lordſhips the peers are met, and that this day and tomorrow are the days that crown all the former juſtice; and that in theſe great caſes it hath been ever the manner to reſpect honour and ſatisfaction, as well as the ordinary parts and forms of juſtice; the occaſion it ſelf admoniſheth me to give your lordſhips and the hearers this contentment, as to make

make declaration of the proceedings of this excellent work of the King's juſtice, from the beginning to the end.

It may pleaſe your grace, my Lord High Steward of *England:* this is now the ſecond time, within the ſpace of thirteen years reign of our happy ſovereign, that this high tribunal ſeat (ordained for the trial of peers) hath been opened and erected, and that with a rare event, ſupplied and exerciſed by one and the ſame perſon, which is a great honour unto you, my Lord Steward.

In all this mean time the King hath reigned in his white robe, not ſprinkled with any one drop of the blood of any of his nobles of this kingdom. Nay, ſuch have been the depths of his mercy, as even thoſe noblemens bloods (againſt whom the proceeding was at *Wincheſter*) *Cobham* and *Grey*, were attainted and corrupted, but not ſpilt or taken away; but that they remained rather ſpectacles of juſtice in their continual impriſonment, than monuments of juſtice in the memory of their ſuffering.

It is true that the objects of his juſtice then and now were very differing: for then it was the revenge of an offence againſt his own perſon and crown, and upon perſons that were male-contents, and contraries to the ſtate and government; but now it is the revenge of the blood and death of a particular ſubject, and the cry of a priſoner: it is upon perſons that were highly in his favour; whereby his Majeſty, to his great honour, hath ſhewed to the world, as if it were written in a ſun-beam, that he is truly the lieutenant of him with whom there is no reſpect of perſons; that his affections royal, are above his affections private; that his favours and nearneſs about him are not like popiſh ſanctuaries, to privilege malefactors; and that his being the beſt maſter in the world doth not lett him from being the beſt King in the world. His people, on the other ſide, may ſay to themſelves, I will lie down in peace, for God, the King, and the Law, protect me againſt great and ſmall. It may be a diſcipline alſo to great men, eſpecially ſuch as are ſwoln in their fortunes from ſmall beginnings, that the King is as well able to level mountains, as to fill valleys, if ſuch be their deſert.

But to come to the preſent caſe: The great frame of juſtice (my lords) in this preſent action, hath a vault, and hath a ſtage; a vault, wherein theſe works of darkneſs were contrived; and a ſtage, with ſteps, by which it was brought to light.

For the former of theſe, I will not lead your lordſhips into it, becauſe I will engrieve nothing againſt a penitent; neither will I open any thing againſt him that is abſent. The one I will give to the laws of humanity, and the other to the laws of juſtice: for I ſhall always ſerve my maſter with a good and ſincere conſcience, and I know, that he accepteth beſt. Therefore I will reſerve that till to-morrow, and hold myſelf to that which I called the ſtage or theatre, whereunto indeed it may be fitly compared: for that things were firſt contained within the inviſible judgments of God, as within a curtain, and after came forth, and were acted moſt worthily by the King, and right well by his miniſters.

Sir *Thomas Overbury* was murthered by poiſon, *September* 15. 1613. This foul and cruel murder did for a time cry ſecretly in the ears of God; but God gave no anſwer to it, otherwiſe than by that voice, (which ſometime he uſeth;) which is *vox populi*, the ſpeech of the people: for there went then a murmur that *Overbury* was poiſoned; and yet the ſame ſubmiſs and low voice of God (the ſpeech of the vulgar people) was not without a counter-tenor or counter-blaſt of the devil, who is the common author both of murder and ſlander; for it was given out that *Overbury* was

dead

dead of a foul diſeaſe; and his body (which they had made *corpus Judaicum* with their poiſons, ſo as it had no whole part) muſt be ſaid to be leproſed with vice, and ſo his name poiſoned as well as his body. For as to diſſoluteneſs, I have not heard the gentleman noted with it; his faults were of inſolency, turbulency, and the like of that kind.

MEAN time there was ſome induſtry uſed (of which I will not now ſpeak) to lull aſleep thoſe that were the revengers of the blood, the father and the brother of the murdered. And in theſe terms things ſtood by the ſpace of two years, during which time God did ſo blind the two great procurers, and dazzle them with their greatneſs, and blind and nail faſt the actors and inſtruments with ſecurity upon their protection, as neither the one looked about them, nor the other ſtirred or fled, or were conveyed away, but remained here ſtill, as under a privy arreſt of God's judgments; inſomuch as *Franklin*, that ſhould have been ſent over to the *Palſgrave* with good ſtore of money, was by God's providence, and the accident of a marriage of his, diverted and ſtayed.

BUT about the beginning of the progreſs the laſt ſummer, God's judgments began to come out of their depths. And as the revealing of murder is commonly ſuch as a man ſaid, *a Domino hoc factum eſt; it is God's work, and it is marvellous in our eyes:* ſo in this particular it was moſt admirable; for it came forth firſt by a complement, a matter of courteſy. My Lord of *Shrewſbury*, that is now with God, recommended to a counſellor of ſtate; (of ſpecial truſt by his place) the late lieutenant * *Helwiſſe*, only for acquaintance, as an honeſt and worthy gentleman, and deſired him, to know him, and to be acquainted with him. That counſellor anſwered him civilly, that my lord did him a favour, and that he ſhould embrace it willingly; but he muſt let his lordſhip know, that there did lie a heavy imputation upon that gentleman, *Helwiſſe*; for that Sir *Thomas Overbury*, his priſoner, was thought to have come to a violent and an untimely death. When this ſpeech was reported back by my Lord of *Shrewſbury* to *Helwiſſe*, *percuſſit illico animum*, he was ſtrucken with it: and being a politick man, and of likelihood doubting that the matter would break forth at one time or other, and that others might have the ſtart of him, and thinking to make his own caſe by his own tale, reſolved with himſelf upon this occaſion, to diſcover unto my Lord of *Shrewsbury*, and that counſellor, that there was an attempt (whereunto he was privy) to have poiſoned *Overbury*, by the hands of his under-keeper, *Weſton*; but that he check'd it, and put it by, and diſſuaded it. But then he left it thus, that it was but as an attempt, or an untimely birth, never executed; and as if his own fault had been no more, but that he was honeſt in forbidding, but fearful of revealing and impeaching, or accuſing great perſons: And ſo with this fine point thought to ſave himſelf.

BUT that counſellor of eſtate wiſely conſidering that by the lieutenant's own tale it could not be ſimply a permiſſion or weakneſs; for that *Weſton* was never diſplaced by the lieutenant, notwithſtanding that attempt; and coupling the ſequel by the beginning, thought it matter fit to be brought before his Majeſty, by whoſe appointment *Helwiſſe* ſet down the like declaration in writing.

UPON this ground the King playeth *Solomon*'s part, *gloria Dei celare rem*,

* Called in Sir *H. Wotton*'s Reliq. p. 413. *Elvis*. In Sir *A. Welden*'s Court of K. *James*, p. 107. *Elwaies*. In *Aulic. Coquin.* p. 141. *Ellowaies*. In Sir *W. Dugdale*'s Baron. of *England*, Tom. 2. p. 425. *Elwayes*. In *Baker*, *Yelvis*, p. 434.

&

& gloria Regis inveſtigare rem, and ſets down certain papers of his own hand, which I might term to be *claves juſtitiae*, keys of juſtice; and may ſerve both for a precedent for Princes to imitate, and for a direction for judges to follow. And his Majeſty carried the balance with a conſtant and ſteady hand, evenly and without prejudice, whether it were a true accuſation of the one part, or a practice and factious ſcandal of the other: Which writing, becauſe I am not able to expreſs according to the worth thereof, I will deſire your lordſhips anon to hear read.

THIS excellent foundation of juſtice being laid by his Majeſty's own hand, it was referred unto ſome counſellors to examine farther; who gained ſome degrees of light from *Weſton*, but yet left it imperfect.

AFTER it was referred to Sir *Edward Coke*, Chief Juſtice of the King's-Bench, as a perſon beſt practiſed in legal examinations; who took a great deal of indefatigable pains in it without intermiſſion, having (as I have heard him ſay) taken at leaſt three hundred examinations in this buſineſs.

BUT theſe things were not done in a corner, I need not ſpeak of them. It is true that my Lord Chief Juſtice, in the dawning and opening of the light, finding the matter touched upon theſe great perſons, very diſcreetly became ſuitor to the King, to have greater perſons than his own rank joined with him; whereupon your lordſhips, my Lord High Steward of *England*, my Lord Steward of the King's Houſe, and my Lord *Zouch*, were joined with him.

NEITHER wanted there (this while) practice to ſuppreſs teſtimony, to deface writings, to weaken the King's reſolution, to ſlander the juſtice, and the like. Nay, when it came to the firſt ſolemn act of juſtice, which was the arraignment of *Weſton*, he had his leſſon to ſtand mute, which had arreſted the whole wheel of juſtice: but this dumb devil, by the means of ſome diſcreet divines, and the potent charm of juſtice together, was caſt out; neither did this poiſonous adder ſtop his ear to theſe charms; but relented, and yielded to his trial.

THEN followed the other proceedings of juſtice againſt the other offenders, *Turner*, *Helwiſſe*, *Franklin*.

BUT all theſe being but the organs and inſtruments of this fact, (the actors, and not the authors) juſtice could not have been crowned without this laſt act againſt theſe great perſons; elſe *Weſton*'s cenſure or prediction might have been verified, when he ſaid, he hoped the ſmall flies ſhould not be caught, and the greater eſcape. Wherein the King, being in great ſtraits between the defacing of his honour, and of his creature, hath (according as he uſeth to do) choſen the better part, reſerving always mercy to himſelf.

THE time alſo of juſtice hath had its true motions. The time until this lady's deliverance was due unto honour, Chriſtianity, and humanity, in reſpect of her great belly. The time ſince was due to another kind of deliverance too; which was, that ſome cauſes of eſtate which were in the womb, might likewiſe be brought forth, not for matter of juſtice, but for reaſon of ſtate. Likewiſe this laſt procraſtination of days had the like weighty grounds and cauſes.

BUT (my lords) where I ſpeak of a ſtage, I doubt I hold you upon the ſtage too long. But before I pray judgment, I pray your lordſhips to hear the King's papers read, that you may ſee how well the King was inſpired, and how nobly he carried it, that innocency might not have ſo much as aſperſion.

Frances, Counteſs of *Somerſet*, hath been indicted and arraigned, as acceſſary before the fact, for the murder and impoiſonment of Sir *Thomas Overbury*, and hath pleaded guilty, and confeſſeth the indictment: I pray judgment againſt the priſoner.

THE

CHARGE

OF

Sir *FRANCIS BACON*,

His MAJESTY's ATTORNEY-GENERAL,

By way of evidence before the Lord High Steward and the Peers, againſt *Robert* Earl of *Somerſet*, concerning the poiſoning of *Overbury*.

IT may pleaſe your grace, my Lord High Steward of *England*, and you my Lords the peers; you have here before you *Robert* Earl of *Somerſet*, to be tried for his life, concerning the procuring and conſenting to the impoiſonment of Sir *Thomas Overbury*, then the King's priſoner in the tower of *London*, as an acceſſary before the fact.

I KNOW your lordſhips cannot behold this nobleman, but you muſt remember his great favour with the King, and the great place that he hath had and born, and muſt be ſenſible that he is yet of your number and body, a peer as you are; ſo as you cannot cut him off from your body but with grief; and therefore that you will expect from us, that give in the King's evidence, ſound and ſufficient matter of proof to ſatisfy your honours and conſciences.

AND for the manner of the evidence alſo, the King our maſter (who among his other virtues excelleth in that virtue of the imperial throne, which is juſtice) hath given us commandment that we ſhould not expatiate, nor make invectives, but materially purſue the evidence, as it conduceth to the point in queſtion; a matter that, tho' we are glad of ſo good a warrant, yet we ſhould have done of ourſelves: for far be it from us, by any ſtrains of wit or art to ſeek to play prizes, or to blazon our names in blood, or to carry the day otherwiſe than upon juſt grounds. We ſhall carry the lanthorn of juſtice (which is the evidence) before your eyes upright, and be able to ſave it from being put out by any winds of evaſions, or vain defences, that is our part; not doubting at all, but that this evidence in itſelf will carry that force as it ſhall little need advantages or aggravations.

MY lords, the courſe which I ſhall hold in delivering that which I ſhall ſay (for I love order) is this:

FIRST, I will ſpeak ſomewhat of the nature and greatneſs of the offence which is now to be tried; and that the King, however he might uſe this gentleman heretofore, as the ſignet upon his finger, (to uſe the ſcripture-phraſe) yet in this caſe could not but put him off, and deliver him into the hands of juſtice.

SECONDLY, I will uſe ſome few words touching the nature of the proofs, which in ſuch a caſe are competent.

THIRDLY, I will ſtate the proofs.

AND laſtly, I will produce the proofs, either out of the examinations and matters in writing, or witneſſes *viva voce*.

FOR

For the offence itſelf, it is of crimes (next unto high treaſon) the greateſt; it is the fouleſt of felonies. And take this offence with the circumſtances, it hath three degrees or ſtages; that it is murder; that it is murder by impoiſonment; that it is murder committed upon the King's priſoner in the tower: I might ſay, that it is murder under the colour of friendſhip; but that is a circumſtance moral; I leave that to the evidence itſelf.

For murder, my lords, the firſt record of juſtice which was in the world was a judgment upon murder in the perſon of *Adam*'s firſt-born, *Cain:* and though it were not puniſhed by death, but with baniſhment and mark of ignominy, in reſpect of the primogeniture, or of the population of the world, or other points of God's ſecret will, yet it was adjudged, and was, as I ſaid, the firſt record of juſtice. So it appeareth likewiſe in ſcripture, that the murder of *Abner* by *Joab*, though it were by *David* reſpited in reſpect of great ſervices paſt, or reaſon of ſtate, yet it was not forgotten. But of this I will ſay no more. It was ever admitted, and ſo ranked in God's own tables, that murder is of offences between man and man (next to treaſon and diſobedience of authority, which ſome divines have referred to the firſt table, becauſe of the lieutenancy of God in princes and fathers) the greateſt.

For impoiſonment, I am ſorry it ſhould be heard of in this kingdom: it is not *noſtri generis nec ſanguinis:* it is an *Italian* crime, fit for the court of *Rome*, where that perſon that intoxicateth the Kings of the earth with his cup of poiſon in heretical doctrine, is many times really and materially intoxicated and impoiſoned himſelf.

But it hath three circumſtances, which make it grievous beyond other murders: whereof the firſt is, that it takes a man in full peace, in God's and the King's peace: he thinks no harm, but is comforting nature with refection and food; ſo that (as the ſcripture ſaith) *his table is made a ſnare.*

The ſecond is, that it is eaſily committed, and eaſily concealed; and on the other ſide, hardly prevented, and hardly diſcovered: for murder by violence, princes have guards, and private men have houſes, attendants, and arms: neither can ſuch murders be committed but *cum ſonitu*, and with ſome overt and apparent act that may diſcover and trace the offender. But for poiſon, the ſaid cup itſelf of princes will ſcarce ſerve, in regard of many poiſons that neither diſcolour nor diſtaſte; and ſo paſſeth without noiſe or obſervation.

And the laſt is, becauſe it containeth not only the deſtruction of the maliced man, but of any other; *Quis modo tutus erit?* For many times the poiſon is prepared for one, and is taken by another: ſo that men die other mens deaths; *concidit infelix alieno vulnere:* and it is as the pſalm calleth it, *ſagitta nocte volans*; *the arrow that flies by night*, it hath no aim or certainty.

Now for the third degree of this particular offence, which is, that it was committed upon the King's priſoner, who was out of his own defence, and merely in the King's protection, and for whom the King and ſtate was a kind of reſpondent; it is a thing that aggravates the fault much. For certainly, my Lord of *Somerſet*, let me tell you this, that Sir *Thomas Overbury* is the firſt man that was murdered in the tower of *London*, ſince the murder of the two young princes.

For the nature of the proofs, your lordſhips muſt conſider, that impoiſonment, of offences is the moſt ſecret; ſo ſecret, as if in all caſes of impoiſonment you ſhould require teſtimony, you were as good proclaim impunity: I will put book examples.

WHO could have impeached *Livia*, by teſtimony, of the impoiſoning of the figs upon the tree, which her huſband was wont, for his pleaſure, to gather with his own hands?

WHO would have impeached *Pariſatis* for the poiſoning of one ſide of the knife that ſhe carved with, and keeping the other ſide clean; ſo that herſelf did eat of the ſame piece of meat that the lady did that ſhe did impoiſon? The caſes are infinite, (and indeed not fit to be ſpoken of) of the ſecrecy of impoiſonments; but wiſe triers muſt take upon them, in theſe ſecret caſes, *Solomon*'s ſpirit, that where there could be no witneſſes, collected the act by the affection.

BUT yet we are not to come to one caſe: for that which your lordſhips are to try, is not the act of impoiſonment, (for that is done to your hand;) all the world by law is concluded to ſay, that *Overbury* was impoiſoned by *Weſton*.

BUT the queſtion before you is of the procurement only, and of the abetting (as the law termeth it) as acceſſary before the fact: which abetting is no more but to do or uſe any act or means, which may aid or conduce unto the impoiſonment.

So that it is not the buying or making of the poiſon, or the preparing, or confecting, or commixing of it, or the giving or ſending or laying the poiſon, that are the only acts that do amount unto abetment. But if there be any other act or means done or uſed to give the opportunity of impoiſonment, or to facilitate the execution of it, or to ſtop or divert any impediments that might hinder it, and this be with an intention to accompliſh and atchieve the impoiſonment; all theſe are abetments, and acceſſaries before the fact. I will put you a familiar example. Allow there be a conſpiracy to murder a man as he journeys by the ways, and it be one man's part to draw him forth to that journey by invitation, or by colour of ſome buſineſs; and another takes upon him to diſſuade ſome friend of his, whom he had a purpoſe to take in his company, that he be not too ſtrong to make his defence; and another hath the part to go along with him, and to hold him in talk till the firſt blow be given: All theſe, my lords, without ſcruple are abettors to this murder, though none of them give the blow, nor aſſiſt to give the blow.

MY lords, he is not the hunter alone that lets ſlip the dog upon the deer, but he that lodges the deer, or raiſes him, or puts him out, or he that ſets a toil that he cannot eſcape, or the like.

BUT this, my lords, little needeth in this preſent caſe, where there is ſuch a chain of acts of impoiſonment as hath been ſeldom ſeen, and could hardly have been expected, but that greatneſs of fortune maketh commonly groſſneſs in offending.

To deſcend to the proofs themſelves, I ſhall keep this courſe.

FIRST, I will make a narrative or declaration of the fact itſelf.

SECONDLY, I will break and diſtribute the proofs as they concern the priſoner.

AND thirdly, according to that diſtribution, I will produce them, and read them, or uſe them.

So that there is nothing that I ſhall ſay, but your lordſhip, my Lord of *Somerſet*, ſhall have three thoughts or cogitations to anſwer it: Firſt, when I open it, you may take your aim. Secondly, when I diſtribute it, you may prepare your anſwers without confuſion. And laſtly, when I produce the witneſſes or examinations themſelves, you may again ruminate and re-adviſe how to make your defence. And this I do the rather, becauſe your me-

mory or underſtanding may not be oppreſſed or overladen with length of evidence, or with confuſion of order. Nay more, when your lordſhip ſhall make your anſwers in your time, I will put you in mind (when cauſe ſhall be) of your omiſſions.

First, therefore, for the ſimple narrative of the fact. Sir *Tho. Overbury* for a time was known to have had great intereſt and great friendſhip with my Lord of *Somerſet*, both in his meaner fortunes, and after: inſomuch as he was a kind of oracle of direction unto him; and if you will believe his own vaunts, (being of an inſolent thraſonical diſpoſition) he took upon him, that the fortune, reputation, and underſtanding of this gentleman (who is well known to have had a better teacher) proceeded from his company and counſel.

And this friendſhip reſted not only in converſation and buſineſs of court, but likewiſe in communication of ſecrets of eſtate. For my Lord of *Somerſet*, at that time exerciſing (by his Majeſty's ſpecial favour and truſt) the office of the ſecretary proviſionally, did not forbear to acquaint *Overbury* with the King's pacquets of diſpatches from all parts, *Spain*, *France*, the *Low Countries*, &c. And this not by glimpſes, or now and then rounding in the ear for a favour, but in a ſettled manner: pacquets were ſent, ſometimes opened by my lord, ſometimes unbroken unto *Overbury*, who peruſed them, copied, regiſtred them, made tables of them as he thought good: ſo that I will undertake, the time was when *Overbury* knew more of the ſecrets of ſtate than the council-table did. Nay, they were grown to ſuch an inwardneſs, as they made a play of all the world beſides themſelves: ſo as they had ciphers and jargons for the King, the Queen, and all the great men; things ſeldom uſed, but either by princes and their embaſſadors and miniſters, or by ſuch as work and practiſe againſt, or at leaſt upon princes.

But underſtand me, my lord, I ſhall not charge you this day with any diſloyalty; only I ſay this for a foundation, that there was a great communication of ſecrets between you and *Overbury*, and that it had relation to matters of eſtate, and the greateſt cauſes of this kingdom.

But, my lords, as it is a principle in nature, that the beſt things are in their corruption the worſt, and the ſweeteſt wine makes the ſharpeſt vinegar; ſo fell it out with them, that this exceſs (as I may term it) of friendſhip ended in mortal hatred on my Lord of *Somerſet*'s part.

For it fell out, ſome twelve months before *Overbury*'s impriſonment in the tower, that my Lord of *Somerſet* was entered into an unlawful love towards his unfortunate lady, then Counteſs of *Eſſex:* which went ſo far, as it was then ſecretly projected (chiefly between my Lord Privy Seal and my Lord of *Somerſet*) to effect a nullity in the marriage with my Lord of *Eſſex*, and ſo to proceed to a marriage with *Somerſet*.

This marriage and purpoſe did *Overbury* mainly oppugn, under pretence to do the true part of a friend, (for that he counted her an unworthy woman;) but the truth was, that *Overbury*, who (to ſpeak plainly) had little that was ſolid for religion or moral virtue, but was a man poſſeſſed with ambition and vain-glory, was loth to have any partners in the favour of my Lord of *Somerſet*, and eſpecially not the houſe of the *Howards*, againſt whom he had always profeſſed hatred and oppoſition: So all was but miſerable bargains of ambition.

And, my lords, that this is no ſiniſter conſtruction, will well appear unto you, when you ſhall hear that *Overbury* makes his brags to my Lord of *Somerſet*, that he had won him the love of the lady by his letters and induſtry: ſo far was he from caſes of conſcience in this matter. And certainly, my lords,

howſoever the tragical miſery of that poor gentleman *Overbury* ought ſomewhat to obliterate his faults: yet becauſe we are not now upon point of civility, but to diſcover the face of truth to the face of juſtice; and that it is material to the true underſtanding of the ſtate of this cauſe; *Overbury* was naught and corrupt, the ballads muſt be amended for that point.

But to proceed; when *Overbury* ſaw that he was like to be diſpoſſeſſed of my lord here, whom he had poſſeſſed ſo long, and by whoſe greatneſs he had promiſed himſelf to do wonders; and being a man of an unbounded and impetuous ſpirit, he began not only to diſſuade, but to deter him from that love and marriage; and finding him fixed, thought to try ſtronger remedies, ſuppoſing that he had my lord's head under his girdle, in reſpect of communication of ſecrets of eſtate, or (as he calls them himſelf in his letters,) ſecrets of all natures; and therefore dealt violently with him, to make him deſiſt, with menaces of diſcovery of ſecrets, and the like.

Hereupon grew two ſtreams of hatred upon *Overbury*; the one, from the lady, in reſpect that he croſſed her love, and abuſed her name, which are furies to women; the other, of a deeper and more mineral nature, from my Lord of *Somerſet* himſelf; who was afraid of *Overbury*'s nature, and that if he did break from him and fly out, he would mine into him and trouble his whole fortunes.

I might add a third ſtream from the Earl of *Northampton*'s ambition, who deſires to be firſt in favour with my Lord of *Somerſet*; and knowing *Overbury*'s malice to himſelf and his houſe, thought that man muſt be removed and cut off. So it was amongſt them reſolved and decreed that *Overbury* muſt die.

Hereupon they had variety of devices. To ſend him beyond ſea, upon occaſion of employment, that was too weak; and they were ſo far from giving way to it, as they croſſed it. There reſted but two ways, quarrel or aſſault, and poiſon. For that of aſſault, after ſome propoſition and attempt, they paſſed from it; it was a thing too open, and ſubject to more variety of chances. That of poiſon likewiſe was a hazardous thing, and ſubject to many preventions and cautions; eſpecially to ſuch a jealous and working brain as *Overbury* had, except he were firſt faſt in their hands.

Therefore the way was firſt to get him into a trap, and lay him up, and then they could not miſs the mark. Therefore in execution of this plot, it was deviſed, that *Overbury* ſhould be deſigned to ſome honourable employment in foreign parts, and ſhould under-hand by the Lord of *Somerſet* be encouraged to refuſe it; and ſo upon that contempt he ſhould be laid priſoner in the tower, and then they would look he ſhould be cloſe enough, and death ſhould be his bail. Yet were they not at their end. For they conſidered, that if there was not a fit lieutenant of the tower for their purpoſe, and likewiſe a fit under-keeper of *Overbury:* Firſt, they ſhould meet with many impediments in the giving and exhibiting the poiſon. Secondly, they ſhould be expoſed to note and obſervation that might diſcover them. And thirdly, *Overbury* in the mean time might write clamorous and furious letters to other his friends, and ſo all might be diſappointed. And therefore the next link of the chain was to diſplace the then lieutenant *Waade*, and to place *Helwiſſe* a principal abettor in the impoiſonment: again, to diſplace *Cary*, that was the under-keeper in *Waade*'s time, and to place *Weſton*, who was the principal actor in the impoiſonment: and this was done in ſuch a while (that it may appear to be done, as it were with one breath;) as there were but fifteen days between the commitment of *Overbury*, the diſplacing of *Waade*, the placing

of

of *Helwiſſe*, the diſplacing of *Cary* the under-keeper, the placing of *Weſton*, and the firſt poiſon given two days after.

Then when they had this poor gentleman in the tower cloſe priſoner, where he could not eſcape nor ſtir, where he could not feed but by their hands, where he could not ſpeak nor write but through their trunks; then was the time to execute the laſt act of this tragedy.

Then muſt *Franklin* be purveyor of the poiſons, and procure five, ſix, ſeven ſeveral potions, to be ſure to hit his complexion. Then muſt Mrs. *Turner* be the ſay-miſtreſs of the poiſons to try upon poor beaſts, what's preſent, and what works at diſtance of time. Then muſt *Weſton* be the tormenter, and chaſe him with poiſon after poiſon; poiſon in ſalts, poiſon in meats, poiſon in ſweetmeats, poiſon in medicines and vomits, until at laſt his body was almoſt come, by uſe of poiſons, to the ſtate that *Mithridates*'s body was by the uſe of treacle and preſervatives, that the force of the poiſons were blunted upon him: *Weſton* confeſſing, when he was chid for not diſpatching him, that he had given him enough to poiſon twenty men. Laſtly, becauſe all this aſked time, courſes were taken by *Somerſet*, both to divert all means of *Overbury*'s delivery, and to entertain *Overbury* by continual letters, partly of hopes and projects for his delivery, and partly of other fables and negotiations; ſomewhat like ſome kind of perſons, (which I will not name) which keep men in talk of fortune-telling, when they have a felonious meaning.

And this is the true narrative of this act of impoiſonment, which I have ſummarily recited.

Now for the diſtribution of the proofs, there are four heads of proofs to prove you guilty (my Lord of *Somerſet*) of this impoiſonment; whereof two are precedent to the impriſonment, the third is preſent, and the fourth is following or ſubſequent. For it is in proofs as it is in lights; there is a direct light, and there is a reflexion of light, or back-light.

The firſt head or proof thereof is, That there was a root of bitterneſs, a mortal malice or hatred, mixed with deep and bottomleſs fears, that you had towards Sir *Thomas Overbury*.

The ſecond is, That you were the principal actor, and had your hand in all thoſe acts, which did conduce to the impoiſonment, and which gave opportunity and means to effect it; and without which the impoiſonment could never have been, and which could ſerve or tend to no other end but to the impoiſonment.

The third is, That your hand was in the very impoiſonment itſelf, which is more than needs to be proved; that you did direct poiſon; that you did deliver poiſon; that you did continually hearken to the ſucceſs of the impoiſonment; and that you ſpurred it on, and called for diſpatch when you thought it lingred.

And laſtly, That you did all the things after the impoiſonment, which may detect a guilty conſcience for the ſmothering of it, and avoiding puniſhment for it, which can be but of three kinds: That you ſuppreſſed, as much as in you was, teſtimony: That you did deface, and deſtroy, and clip and miſdate all writings that might give light to the impoiſonment; and that you did fly to the altar of guiltineſs, which is a pardon, and a pardon of murder, and a pardon for your ſelf, and not for your lady.

In this, my lord, I convert my ſpeech to you, becauſe I would have you attend the points of your charge; and ſo of your defence the better. And two of theſe heads I have taken to my ſelf, and left the other two to the King's two ſerjeants.

For

For the firſt main part, which is the mortal hatred coupled with fear, that was in my Lord of *Somerſet* towards *Overbury*, although he did palliate it with a great deal of hypocriſy and diſſimulation even to the end; I ſhall prove it (my lord ſteward, and you my lords and peers) manifeſtly by matter both of oath and writing. The root of this hatred was that that hath coſt many a man's life; that is, fear of diſcovering ſecrets: Secrets (I ſay) of a high and dangerous nature; wherein the courſe that I will hold ſhall be this:

First, I will ſhew that ſuch a breach and malice was between my lord and *Overbury*, and that it burſt forth into violent menaces and threats on both ſides.

Secondly, That theſe ſecrets were not light, but of a high nature; for I will give you the elevation of the pole. They were ſuch as my Lord of *Somerſet* for his part had made a vow, that *Overbury* ſhould neither live in court nor country. That he had likewiſe opened himſelf and his own fears ſo far, that if *Overbury* ever came forth of the tower, either *Overbury* or himſelf muſt die for it. And of *Overbury*'s part, he had threatned my lord, that whether he did live or die, my lord's ſhame ſhould never die, but he would leave him the moſt odious man of the world. And farther, that my lord was like enough to repent it, in the place where *Overbury* wrote, which was the tower of *London*. He was a true prophet in that: ſo here is the height of the ſecrets.

Thirdly, I will ſhew you, that all the king's buſineſs was by my lord put into *Overbury*'s hands; ſo as there is work enough for ſecrets, whatſoever they were: And like princes confederates, they had their ciphers and jargons.

And laſtly, I will ſhew you that it is but a toy to ſay that the malice was only in reſpect he ſpake diſhonourably of the lady; or for doubt of breaking the marriage: for that *Overbury* was a co-adjutor to that love, and the Lord of *Somerſet* was as deep in ſpeaking ill of the lady as *Overbury*. And again, it was too late for that matter, for the bargain of the match was then made and paſt. And if it had been no more but to remove *Overbury* from diſturbing of the match, it had been an eaſy matter to have banded over *Overbury* beyond ſeas, for which they had a fair way; but that would not ſerve their turn.

And laſtly, *periculum periculo vincitur*, to go ſo far as an impoiſonment, muſt have a deeper malice than flaſhes: for the cauſe muſt bear a proportion to the effect.

For the next general head of proofs, which conſiſts in acts preparatory to the middle acts, they are in eight ſeveral points of the compaſs, as I may term it.

First, That there were devices and projects to diſpatch *Overbury*, or to overthrow him, plotted between the Counteſs of *Somerſet*, the Earl of *Somerſet*, and the Earl of *Northampton*, before they fell upon the impoiſonment: for always before men fix upon a courſe of miſchief, there be ſome rejections; but die he muſt one way or other.

Secondly, That my Lord of *Somerſet* was a principal practiſer (I muſt ſpeak it) in a moſt perfidious manner, to ſet a train or trap for *Overbury* to get him into the Tower; without which they never durſt have attempted the impoiſonment.

Thirdly, That the placing of the lieutenant *Helwiſſe* one of the impoiſoners, and the diſplacing of *Waade*, was by the means of my Lord of *Somerſet*.

Fourthly,

FOURTHLY, That the placing of *Weſton* the under-keeper, who was the principal impoiſoner, and the diſplacing of *Cary*, and the doing of all this within fifteen days after *Overbury*'s commitment, was by the means and countenance of my Lord of *Somerſet*. And theſe two were the active inſtruments of the impoiſonment: and this was a buſineſs that the lady's power could not reach unto.

FIFTHLY, That becauſe there muſt be a time for the tragedy to be acted, and chiefly becauſe they would not have the poiſons work upon the ſudden; and for that the ſtrength of *Overbury*'s nature, or the very cuſtom of receiving poiſon into his body, did overcome the poiſons that they wrought not ſo faſt; therefore *Overbury* muſt be held in the tower. And as my Lord of *Somerſet* got him into the trap, ſo he kept him in, and abuſed him with continual hopes of liberty; and diverted all the true and effectual means of his liberty, and made light of his ſickneſs and extremities.

SIXTHLY, That not only the plot of getting *Overbury* into the tower, and the devices to hold him and keep him there; but the ſtrange manner of his cloſe keeping (being in but for a contempt) was by the device and means of my Lord of *Somerſet*, who denied his father to ſee him, denied his ſervants that offered to be ſhut up cloſe priſoners with him; and in effect handled it ſo, that he was cloſe priſoner to all his friends, and open and expoſed to all his enemies.

SEVENTHLY, That the advertiſement which my lady received from time to time from the lieutenant or *Weſton*, touching *Overbury*'s ſtate of body or health, were ever ſent up to the court, though it were in progreſs, and that from my lady: ſuch a thirſt and liſtening this lord had to hear that he was diſpatched.

LASTLY, There was a continual negotiation to ſet *Overbury*'s head on work, that he ſhould make ſome recognition to clear the honour of the lady; and that he ſhould become a good inſtrument towards her and her friends: all which was but entertainment; for your lordſhips ſhall plainly ſee divers of my Lord of *Northampton*'s letters (whoſe hand was deep in this buſineſs) written (I muſt ſay it) in dark words and clauſes; that there was one thing pretended and another intended; that there was a real charge, and there was ſomewhat not real; a main drift and a diſſimulation. Nay farther, there be ſome paſſages which the peers in their wiſdom will diſcern to point directly at the impoiſonment.

AFTER this inducement followed the evidence itſelf.

MISCELLANIES.

CERTAIN OBSERVATIONS UPON A LIBEL,

Publiſhed this preſent YEAR, 1592.

INTITULED

A DECLARATION of the TRUE CAUSES of the GREAT TROUBLES,

Preſuppoſed to be intended againſt the REALM of *ENGLAND.*

IT were juſt and honourable for princes being in wars together, that howſoever they proſecute their quarrels and debates by arms and acts of hoſtility; yea, though the wars be ſuch, as they pretend the utter ruin and overthrow of the forces and ſtates one of another, yet they ſo limit their paſſions as they preſerve two things ſacred and inviolable; that is, the life and good name each of other. For the wars are no maſſacres and confuſions; but they are the higheſt trials of right; when princes and ſtates that acknowledge no ſuperior upon earth, ſhall put themſelves upon the juſtice of God for the deciding of their controverſies by ſuch ſucceſs, as it ſhall pleaſe him to give on either ſide. And as in the proceſs of particular pleas between private men, all things ought to be ordered by rules of civil laws; ſo in the proceedings of the war nothing ought to be done againſt the law of nations, or the law of honour; which laws have ever pronounced theſe two ſorts of men; the one, conſpirators againſt the perſons of princes; the other, libellers againſt their good fame, to be ſuch enemies of common ſociety as are not to be cheriſhed, no not by enemies. For in the examples of times, which were leſs corrupted, we find that when in the greateſt heats and extremities of wars, there have been made offers of murderous and traitorous attempts againſt the perſon of a prince to the enemy, they have been not only rejected, but alſo revealed: And in like manner, when diſhonourable mention hath been made of a prince before an enemy prince, by ſome that have thought therein to pleaſe his humour, he hath ſhewed himſelf contrariwiſe, utterly diſtaſted therewith, and been ready to conteſt for the honour of an enemy.

ACCORDING

ACCORDING to which noble and magnanimous kind of proceeding, it will be found, that in the whole courſe of her Majeſty's proceeding with the King of *Spain*, ſince the amity interrupted, there was never any project by her Majeſty, or any of her Miniſters, either moved or aſſented unto, for the taking away of the life of the ſaid King: neither hath there been any declaration or writing of eſtate, no nor book allowed, wherein his honour hath been touched or taxed, otherwiſe than for his ambition; a point which is neceſſarily interlaced with her Majeſty's own juſtification. So that no man needeth to doubt, but that thoſe wars are grounded, upon her Majeſty's part, upon juſt and honourable cauſes, which have ſo juſt and honourable a proſecution; conſidering it is a much harder matter when a prince is entered into wars, to hold reſpect then, and not to be tranſported with paſſion, than to make moderate and juſt reſolutions in the beginnings.

BUT now if a man look on the other part, it will appear that rather, as it is to be thought by the ſollicitation of traitorous ſubjects (which is the only poiſon and corruption of all honourable war between foreigners;) or by the preſumption of his agents and miniſters, than by the proper inclination of that King, there hath been, if not plotted and practiſed, yet at the leaſt comforted, conſpiracies againſt her Majeſty's ſacred perſon; which nevertheleſs God's goodneſs hath uſed and turned, to ſhew by ſuch miraculous diſcoveries into how near and precious care and cuſtody it hath pleaſed him to receive her Majeſty's life and preſervation. But in the other point it is ſtrange what a number of libellous and defamatory books and writings, and in what variety, with what art and cunning handled, have been allowed to paſs through the world in all languages againſt her Majeſty and her government; ſometimes pretending the gravity and authority of church ſtories to move belief; ſometimes formed into remonſtrances and advertiſements of eſtate to move regard; ſometimes preſented as it were in tragedies of the perſecutions of catholicks to move pity; ſometimes contrived into pleaſant paſquils and ſatires to move ſport: ſo as there is no ſhape whereunto theſe fellows have not transformed themſelves; nor no humour nor affection in the mind of man to which they have not applied themſelves; thereby to inſinuate their untruths and abuſes to the world. And indeed let a man look into them, and he ſhall find them the only triumphant lyes that ever were confuted by circumſtances of time and place; confuted by contrariety in themſelves, confuted by the witneſs of infinite perſons that live yet, and have had particular knowledge of the matters; but yet avouched with ſuch aſſeveration, as if either they were fallen into that ſtrange diſeaſe of the mind, which a wiſe writer deſcribeth in theſe words, *fingunt ſimul creduntque*; or as if they had received it as a principal precept and ordinance of their ſeminaries, *audacter calumniare ſemper aliquid haeret*; or as if they were of the race which in old time were wont to help themſelves with miraculous lyes: but when the cauſe of this is entered into, namely, that there paſſeth over out of this realm, a number of eager and unquiet ſcholars, whom their own turbulent and humorous nature preſſeth out to ſeek their adventures abroad; and that on the other ſide, they are nouriſhed rather in liſtening after news and intelligences, and in whiſperings, than in any commendable learning: and after a time, when either their neceſſitous eſtate, or their ambitious appetites importune them, they fall on deviſing how to do ſome acceptable ſervice to that ſide which maintaineth them; ſo as ever when their credit waxeth cold with foreign princes, or that their penſions are ill paid, or ſome preferment is in ſight at which they level, ſtraitways out cometh a libel, pretending thereby to keep in life the party, which within the realm is contrary

trary to the ſtate; (wherein they are as wiſe as he, that thinketh to kindle a fire by blowing the dead aſhes:) when, I ſay, a man looketh into the cauſe and ground of this plentiful field of libels, he will ceaſe to marvel, conſidering the concurrence which is in the nature of the ſeed; as in the travail of tilling and dreſſing, yea, and in the fitneſs of the ſeaſon for the bringing up of thoſe infectious weeds.

But, to verify the ſaying of our Saviour, *non eſt diſcipulus ſuper magiſtrum*; as they have ſought to deprave her Majeſty's government in her ſelf, ſo have they not forgotten to do the ſame in her principal ſervants and counſellors; thinking belike, that as the immediate invectives againſt her Majeſty do beſt ſatisfy the malice of the foreigner, ſo the ſlander and calumniation of her principal counſellors, agreed beſt with the humours of ſome malecontents within the realm; imagining alſo, that it was like they would be more ſcattered here, and freelier diſperſed; and alſo ſhould be leſs odious to thoſe foreigners which were not merely partial and paſſionate; who have for the moſt part in deteſtation the traitorous libellings of ſubjects directly againſt their natural prince.

Amongst the reſt in this kind, there hath been publiſhed this preſent year of 1592, a libel, that giveth place to none of the reſt in malice and untruths; though inferior to moſt of them in penning and ſtyle; the author having choſen the vein of a *Lucianiſt*, and yet being a counterfeit even in that kind. This libel is intitled, A declaration of the true cauſes of the great troubles preſuppoſed to be intended againſt the realm of *England*. And hath a ſemblance as if it were bent againſt the doings of her Majeſty's ancient and worthy counſellor the Lord *Burleigh*; whoſe carefulneſs and pains her Majeſty hath uſed in her counſels and actions of this realm for theſe thirty-four years ſpace in all dangerous times, and amidſt many and mighty practices; and with ſuch ſucceſs, as our enemies are put ſtill to their paper-ſhot of ſuch libels as theſe; the memory of whom will remain in this land, when all theſe libels ſhall be extinct and forgotten, according to the Scripture, *memoria juſti cum laudibus, at impiorum nomen putreſcet.* But it is more than evident, by the parts of the ſame book, that the author's malice was to her Majeſty and her government, as may eſpecially appear in this, that he charged not his lordſhip with any particular actions of his private life, (ſuch power had truth;) whereas the libels made againſt other counſellors have principally inſiſted upon that part: but hath only wreſted and detorted ſuch actions of ſtate, as in times of his ſervice have been managed; and depraving them, hath aſcribed and imputed to him the effects that have followed; indeed, to the good of the realm, and the honour of her Majeſty; though ſometimes to the provoking of the malice, but abridging of the power and means of deſperate and incorrigible ſubjects.

All which ſlanders, as his lordſhip might juſtly deſpiſe, both for their manifeſt untruths, and for the baſeneſs and obſcurity of the author; ſo nevertheleſs, according to the moderation which his lordſhip uſeth in all things; never claiming the privilege of his authority, when it is queſtion of ſatisfying the world; he hath been content, that they be not paſſed over altogether in ſilence; whereupon I have, in particular duty to his lordſhip, amongſt others that do honour and love his lordſhip, and that have diligently obſerved his actions, and in zeal of truth collected, upon the reading of the ſaid libel, certain obſervations, not in form of a juſt anſwer, leſt I ſhould fall into the error whereof *Solomon* ſpeaketh thus, *Anſwer not a fool in his own kind, leſt thou alſo be like him*; but only to diſcover the malice, and to reprove and convict the untruths thereof.

The

THE points that I have obſerved upon the reading of this libel, are theſe following.

1. OF the ſcope or drift of the libeller.

2. OF the preſent eſtate of this realm of *England*, whether it may be truly avouched to be proſperous or afflicted.

3. OF the proceedings againſt the pretended catholicks, whether they have been violent, or moderate, and neceſſary.

4. OF the diſturbance of the quiet of Chriſtendom, and to what cauſes it may be juſtly imputed.

5. OF the cunning of the libeller, in palliation of his malicious invective againſt her Majeſty and the ſtate, with pretence of taxing only the actions of the lord *Burleigh*.

6. CERTAIN true general notes upon the actions of the lord *Burleigh*.

7. OF divers particular untruths and abuſes diſperſed through the libel.

8. OF the height of impudence that theſe men are grown unto, in publiſhing and avouching untruths; with a particular recital of ſome of them for an aſſay.

1. Of the ſcope or drift of the libeller.

IT is good advice, in dealing with cautelous and malicious perſons, whoſe ſpeech is ever at diſtance with their meanings, *non quid dixerint, ſed quo ſpectarint, videndum:* a man is not to regard what they affirm, or what they hold; but what they would convey under the pretended diſcovery, and what turn they would ſerve. It ſoundeth ſtrangely in the ears of an *Engliſh* man, that the miſeries of the preſent ſtate of *England* exceed them of former times whatſoever. One would ſtraitway think with himſelf, doth this man believe what he ſaith? Or not believing it, doth he think it poſſible to make us believe it? Surely, in my conceit, neither of both; but his end, no doubt, was to round the Pope and the King of *Spain* in the ear, by ſeeming to tell a tale to the people of *England*. For ſuch books are ever wont be tranſlated into divers languages; and, no doubt, the man was not ſo ſimple as to think he could perſuade the people of *England* the contrary of what they taſte and feel. But he thought he might better abuſe the ſtates abroad, if he directed his ſpeech to them who could beſt convict him, and diſprove him if he ſaid untrue; ſo that as *Livy* ſaith in the like caſe, *AEtolos magis, coram quibus verba facerent, quam ad quos, penſi habere*; That the *AEtolians*, in their tale, did more reſpect thoſe who did overhear them, than thoſe to whom they directed their ſpeech: ſo in this matter this fellow cared not to be counted a lyar by all *Engliſh*, upon price of deceiving of *Spain* and *Italy*; for it muſt be underſtood, that it hath been the general practice of this kind of men many years, of the one ſide, to abuſe the foreign eſtates, by making them believe that all is out of joint and ruinous here in *England*, and that there is great part ready to join with the invader; and on the other ſide, to make evil ſubjects of *England* believe of great preparations abroad, and in great readineſs to be put in act, and ſo to deceive on both ſides: and this I take to be his principal drift. So again, it is an extravagant and incredible conceit, to imagine that all the concluſions and actions of eſtate which have paſſed during her Majeſty's reign, ſhould be aſcribed to one counſellor alone; and to ſuch an one as was never noted for an imperious or over-ruling man; and to ſay, that though he carried them not by violence, yet he compaſſed them by device: there is no man of judgment that looketh into the nature of theſe times, but will eaſily deſcry that the wits of theſe days are too much

refined for any man to walk inviſible: or to make all the world his inſtruments; and therefore, no not in this point aſſuredly: the libeller ſpake as he thought; but this he foreſaw, that the imputation of cunning doth breed ſuſpicion, and the imputation of greatneſs and ſway doth breed envy; and therefore finding where he was moſt wrong, and by whoſe policy and experience their plots were moſt croſſed, the mark he ſhot at was to ſee whether he could heave at his lordſhip's authority, by making him ſuſpected to the Queen, or generally odious to the realm; knowing well enough for the one point, that there are not only jealouſies, but certain revolutions in princes minds: ſo that it is a rare virtue in the rareſt princes, to continue conſtant to the end in their favours and employments. And knowing for the other point, that envy ever accompanieth greatneſs, though never ſo well deſerved: and that his lordſhip hath always marched a round and a real courſe in ſervice; and as he hath not moved envy by pomp and oſtentation; ſo hath he never extinguiſhed it by any popular or inſinuative carriage of himſelf: and this no doubt was his ſecond drift.

A THIRD drift was, to aſſay if he could ſupplant and weaken (by this violent kind of libelling, and turning the whole imputation upon his lordſhip) his reſolution and courage; and to make him proceed more cauteloufly, and not ſo throughly and ſtrongly againſt them; knowing his lordſhip to be a politick man, and one that hath a great ſtake to loſe.

LASTLY, leſt while I diſcover the cunning and art of this fellow, I ſhould make him wiſer than he was, I think a great part of this book was paſſion; *difficile eſt tacere, cum doleas.* The humours of theſe men being of themſelves eager and fierce, have, by the abort and blaſting of their hopes, been blinded and enraged. And ſurely this book is, of all that ſort that have been written, of the meaneſt workmanſhip; being fraughted with ſundry baſe ſcoffs, and cold amplifications, and other characters of deſpite; but void of all judgment or ornament.

2. Of the preſent eſtate of this realm of *England*, whether it may be truly avouched to be proſperous or afflicted.

THE benefits of almighty God upon this land, ſince the time that in his ſingular providence he led as it were by the hand, and placed in the kingdom his ſervant our Queen *Elizabeth*, are ſuch, as not in boaſting, or in confidence of our ſelves, but in praiſe of his holy name, are worthy to be both conſidered and confeſſed, yea and regiſtered in perpetual memory: notwithſtanding, I mean not after the manner of a panegyric to extol the preſent time: it ſhall ſuffice only that thoſe men, that through the gall and bitterneſs of their own heart, have loſt their taſte and judgment; and would deprive God of his glory, and us of our ſenſes, in affirming our condition to be miſerable, and full of tokens of the wrath and indignation of God, be reproved.

IF then it be true, that *nemo eſt miſer, aut felix, niſi comparatus*; whether we ſhall (keeping our ſelves within the compaſs of our own iſland) look into the memories of times paſt, or at this preſent time, take a view of other ſtates abroad in *Europe*; we ſhall find that we need not give place to the happineſs either of anceſtors or neighbours. For if a man weigh well all the parts of ſtate and religion, laws, adminiſtration of juſtice, policy of government, manners, civility, learning and liberal ſciences, induſtry and manual arts, arms and proviſions of wars for ſea and land, treaſure, traffic, improvement of the ſoil, population, honour and reputation, it will appear

that

that taking one part with another, the ſtate of this nation was never more flouriſhing.

It is eaſy to call to remembrance out of hiſtories, the Kings of *England*, which have in more ancient times enjoyed greateſt happineſs; beſides her Majeſty's father and grandfather, that reigned in rare felicity, as is freſh in memory. They have been King *Henry* I. King *Henry* II. King *Henry* II.. King *Edward* I. King *Edward* III. King *Henry* V. All which have been princes of royal virtue, great felicity, and famous memory. But it may be truly affirmed, without derogation to any of theſe worthy princes, that whatſoever we find in libels, there is not to be found in the *Engliſh* chronicles, a King that hath in all reſpects laid together, reigned with ſuch felicity as her Majeſty hath done. For as for the firſt three *Henries*, the firſt came in too ſoon after a conqueſt; the ſecond too ſoon after an Uſurpation; and the third too ſoon after a league, or barons war, to reign with ſecurity and contentation. King *Henry* I. alſo had unnatural wars with his brother *Robert*, wherein much nobility was conſumed: he had therewithal tedious wars in *Wales*; and was not without ſome other ſeditions and troubles; as namely the great conteſtation of his prelates. King *Henry* II. his happineſs was much deformed by the revolt of his ſon *Henry*, after he had aſſociated him, and of his other ſons. King *Henry* III. beſides his continual wars in *Wales*, was after forty four years reign unquieted with intricate commotions of his barons; as may appear by the mad parliament held at *Oxford*, and the acts thereupon enſuing. His ſon *Edward* I. had a more flouriſhing time than any of the other; came to his kingdom at ripe years, and with great reputation, after his voyage into the *Holy Land*, and was much loved and obeyed, contrived his wars with great judgment: firſt having reclaimed *Wales* to a ſettled allegiance, and being upon the point of uniting *Scotland*. But yet I ſuppoſe it was more honour for her Majeſty to have ſo important a piece of *Scotland* in her hand, and the ſame with ſuch juſtice to render up, than it was for that worthy King to have advanced in ſuch forwardneſs the conqueſt of that nation. And for King *Edward* III. his Reign was viſited with much ſickneſs and mortality; ſo as they reckoned in his days three ſeveral mortalities; one in the 22d year, another in the 35th year, and the laſt in the 43d year of his reign; and being otherwiſe victorious and in proſperity, was by that only croſs more afflicted, than he was by the other proſperities comforted. Beſides, he entred hardly; and again, according to the verſe: *cedebant ultima primis*; his latter times were not ſo proſperous. And for King *Henry* V. as his ſucceſs was wonderful, ſo he wanted continuance; being extinguiſhed after ten years reign in the prime of his fortunes.

Now for her Majeſty, we will firſt ſpeak of the bleſſing of continuance, as that which wanted in the happieſt of theſe Kings; and is not only a great favour of God unto the prince, but alſo a ſingular benefit unto the people; for that ſentence of the ſcripture, *miſera natio cum multi ſunt principes ejus*, is interpreted not only to extend to diviſions and diſtractions in government, but alſo to frequent changes in ſucceſſion: conſidering, that the change of a prince bringeth in many charges, which are harſh and unpleaſant to a great part of the ſubjects. It appeareth then, that of the line of five hundred and fourſcore years, and more, containing the number of twenty two Kings, God hath already prolonged her Majeſty's reign to exceed ſixteen of the ſaid two and twenty; and by the end of this preſent year, (which God proſper) ſhe ſhall attain to be equal with two more: during which time there have deceaſed four Emperors, as many *French* Kings; twice ſo many Biſhops of *Rome*.

1. Continuance.

Rome. Yea, every ſtate in Chriſtendom, except *Spain*, have received ſundry ſucceſſions. And for the King of *Spain*, he is waxed ſo infirm, and thereby ſo retired, as the report of his death ſerveth for every year's news: whereas her Majeſty (thanks be given to God) being nothing decayed in vigour of health and ſtrength, was never more able to ſupply and ſuſtain the weight of her affairs, and is as far as ſtandeth with the dignity of her Majeſty's royal ſtate, continually to be ſeen, to the great comfort and hearty eaſe of her people.

2. Health. SECONDLY, we will mention the bleſſing of health: I mean generally of the people, which was wanting in the reign of another of theſe Kings; which elſe deſerved to have the ſecond place in happineſs, which is one of the great favours of God towards any nation. For as there be three ſcourges of God, war, famine and peſtilence; ſo are there three benedictions, peace, plenty, and health. Whereas therefore this realm hath been viſited in times paſt with ſundry kinds of mortalities, (as peſtilences, ſweats, and other contagious diſeaſes) it is ſo, in her Majeſty's times, being of the continuance aforeſaid, there was only towards the beginning of her reign ſome ſickneſs between *June* and *February* in this city; but not diſperſed into any other part of the realm, as was noted; which we call yet the great plague; becauſe, that though it was nothing ſo grievous and ſo ſweeping as it hath been ſundry times heretofore, yet it was great in reſpect of the health, which hath followed ſince: which hath been (eſpecially of late years) as we began to diſpute and move queſtions of the cauſes, whereunto it ſhould be aſcribed, until ſuch time as it pleaſed God to teach us that we ought to aſcribe it only to his mercy, by touching us a little this preſent year; but with a very gentle hand; and ſuch as it hath pleaſed him ſince to remove. But certain it is, for ſo many years together, notwithſtanding the great peſtering of people in houſes, the great multitude of ſtrangers, and the ſundry voyages by ſeas, (all which hath been noted to be cauſes of peſtilence) the health univerſal of the people was never ſo good.

3. Peace. THE third bleſſing is that which all the politick and fortunate Kings before recited have wanted; that is peace: for there was never foreigner ſince her Majeſty's reign, by invaſion or incurſion of moment, that took any footing within the realm of *England.* One rebellion there hath been only, but ſuch an one as was repreſſed within the ſpace of ſeven weeks, and did not waſte the realm ſo much as by the deſtruction or depopulation of one poor town. And for wars abroad, taking in thoſe of *Leith*, thoſe of *New-haven*, the ſecond expedition into *Scotland*, the wars of *Spain*, which I reckon from the year 86, or 87 (before which time neither had the King of *Spain* withdrawn his embaſſadors here reſiding; neither had her Majeſty received into protection the United Provinces of the *Low-Countries*) and the aid of *France:* They have not occupied in time a third part of her Majeſty's reign; nor conſumed paſt two of any noble houſe; whereof *France* took one, and *Flanders* another; and very few beſides of quality or appearance. They have ſcarce mowed down the overcharge of the people within the realm. It is therefore true, that the Kings aforeſaid, and others her Majeſty's progenitors, have been victorious in their wars, and have made many famous and memorable voyages and expeditions into ſundry parts; and that her Majeſty, contrariwiſe from the beginning, put on a firm reſolution to content herſelf within thoſe limits of her dominions which ſhe received, and to entertain peace with her neighbour princes; which reſolution ſhe hath ever ſince (notwithſtanding ſhe hath had rare opportunities, juſt claims and pretences, and great

and

and mighty means) ſought to continue. But if this be objected to be the leſs honourable fortune; I anſwer, that ever amongſt the heathen who held not the expence of blood ſo precious as Chriſtians ought to do, the peaceable government of *Auguſtus Caeſar* was ever as highly eſteemed as the victories of *Julius* his uncle; and that the name of *pater patriae* was ever as honourable as that of *propagator imperii*. And this I add further, that during this inward peace of ſo many years in the actions of war before mentioned, which her Majeſty, either in her own defence or in juſt and honourable aids hath undertaken; the ſervice hath been ſuch as hath carried no note of a people, whoſe militia were degenerated through long peace; but hath every way anſwered the ancient reputation of the *Engliſh* arms.

4. Plenty and wealth.

THE fourth bleſſing is plenty and abundance: and firſt for grain, and all victuals, there cannot be more evident proof of the plenty than this; that whereas *England* was wont to be fed by other countries from the eaſt, it ſufficeth now to feed other countries; ſo as we do many times tranſport and ſerve ſundry foreign countries; and yet there was never the like multitude of people to eat it within the realm. Another evident proof thereof may be, that the good yields of corn which have been together with ſome toleration of vent, hath of late time invited and inticed men to break up more ground, and to convert it to tillage, than all the penal laws for that purpoſe made and enacted, could ever by compulſion effect. A third proof may be, that the prices of grain and victual were never of late years more reaſonable. Now for arguments of the great wealth in all other reſpects, let the points following be conſidered.

THERE was never the like number of fair and ſtately houſes as have been built and ſet up from the ground ſince her Majeſty's reign; inſomuch, that there have been reckoned in one ſhire that is not great, to the number of thirty three, which have been all new built within that time; and whereof the meaneſt was never built for two thouſand pounds.

THERE were never the like pleaſures of goodly gardens and orchards, walks, pools, and parks, as do adorn almoſt every manſion-houſe.

THERE was never the like number of beautiful and coſtly tombs and monuments which are erected in ſundry churches in honourable memory of the dead.

THERE was never the like quantity of plate, jewels, ſumptuous moveables and ſtuff, as is now within the realm.

THERE was never the like quantity of waſte and unprofitable ground, inned, reclaimed and improved.

THERE was never the like husbanding of all ſorts of grounds by fencing, manuring, and all kinds of good huſbandry.

THE towns were never better built nor peopled; nor the principal fairs and markets ever better cuſtomed or frequented.

THE commodities and eaſe of rivers cut by hand, and brought into a new channel; of piers that have been built; of waters that have been forced and brought againſt the ground, were never ſo many.

THERE was never ſo many excellent artificers, nor ſo many new handy-crafts uſed and exerciſed; nor new commodities made within the realm, ſugar, paper, glaſs, copper, divers ſilks, and the like.

THERE was never ſuch complete and honourable proviſion of horſe, armour, weapons, ordinance of the war.

5. Increaſe of people.

THE fifth bleſſing hath been the great population and multitude of families increaſed within her Majeſty's days: for which point I refer my ſelf to the proclamations of reſtraint of building in *London*, the inhibition of in-

mates of ſundry cities, the reſtraint of cottages by act of parliament, and ſundry other tokens of record of the ſurcharge of people.

6. Reformation in religion.

BESIDES theſe parts of a government, bleſſed from God, wherein the condition of the people hath been more happy in her Majeſty's times, than in the times of her progenitors, there are certain ſingularities and particulars of her Majeſty's reign; wherein I do not ſay, that we have enjoyed them in a more ample degree and proportion than in former ages, (as it hath fallen out in the points before mentioned;) but ſuch as were in effect unknown and untaſted heretofore. As firſt, the purity of religion, which is a benefit ineſtimable, and was in the time of all former Princes, until the days of her Majeſty's father of famous memory, unheard of. Out of which purity of religion hath ſince enſued, beſide the principal effect of the true knowledge and worſhip of God, three points of great conſequence unto the civil eſtate.

The ſpecial benefits eſtabliſhed among us by the purity of religion.

ONE, the ſtay of a mighty treaſure within the realm, which in foretimes was drawn forth to *Rome*. Another, the diſperſing and diſtribution of thoſe revenues, amounting to a third part of the land of the realm; and that of the goodlieſt and the richeſt ſort, which heretofore was unprofitably ſpent in monaſteries, into ſuch hands as by whom the realm receiveth, at this day, ſervice and ſtrength; and many great houſes have been ſet up and augmented. The third, the managing and enfranchiſing of the regal dignity from the recognition of a foreign ſuperiour. All which points, though begun by her father, and continued by her brother, were yet nevertheleſs, after an eclipſe or intermiſſion, reſtored and re-eſtabliſhed by her Majeſty's ſelf.

Fineneſs of money.

SECONDLY, the fineneſs of money: for as the purging away of the droſs of religion, the heavenly treaſure, was common to her Majeſty, with her father and her brother; ſo the purging of the baſe money, the earthly treaſure, hath been altogether proper to her Majeſty's own times; whereby our monies, bearing the natural eſtimation of the ſtamp or mark, both every man reſteth aſſured of his own value, and free from the loſſes and deceits which fall out in other places upon the riſing and falling of monies.

The might of the navy.

THIRDLY, the might of the navy, and augmentation of the ſhipping of the realm; which, by politic conſtitutions for maintenance of fiſhing, and the encouragement and aſſiſtance given to the undertakers of new diſcoveries and trade by ſea, is ſo advanced, as this iſland is become (as the natural ſite thereof deſerveth) the lady of the ſea.

Now, to paſs from the compariſon of time to the compariſon of place, we may find in the ſtates abroad, cauſe of pity and compaſſion in ſome; but of envy or emulation in none; our condition being by the good favour of God, not inferior to any.

Compariſon of the ſtate of *England* with the ſtates abroad.

THE kingdom of *France*, which, by reaſon of the ſeat of the empire of the weſt, was wont to have the precedence of the kingdoms of *Europe*, is now fallen into thoſe calamities, that, as the Prophet ſaith, *From the crown of the head to the ſole of the foot, there is no whole place.* The diviſions are ſo many, and ſo intricate of proteſtants and catholicks, royaliſts and leaguers, *Bourboniſts* and *Lorainiſts*, patriots and *Spaniſh*; as it ſeemeth, God hath ſome great work to bring to paſs upon that nation: yea, the nobility divided from the third eſtate, and the towns from the fields. All which miſeries, truly to ſpeak, have been wrought by *Spain* and the *Spaniſh* faction.

Afflicted in *France*.

Low-Countries.

THE *Low-Countries*, which were within the age of a young man, the richeſt, the beſt peopled, and the beſt built plots of *Europe*, are in ſuch eſtate, as a country is like to be in, that hath been the ſeat of thirty years war: and although the ſea-provinces be rather increaſed in wealth and ſhipping

ping than otherwiſe; yet they cannot but mourn for their diſtraction from the reſt of their body.

THE kingdom of *Portugal* which of late times, through their merchandizing and places in the *Eaſt Indies*, was grown to be an opulent kingdom, is now at the laſt, after the unfortunate journey of *Afric*, in that ſtate as a country is like to be, that is reduced under a foreigner by conqueſt; and ſuch a foreigner as hath his competitor in title, being a natural *Portugal* and no ſtranger; and having been once in poſſeſſion, yet in life; whereby his jealouſy muſt neceſſarily be encreaſed, and through his jealouſy their oppreſſion: which is apparent, by the carrying of many noble families out of their natural countries to live in exile, and by putting to death a great number of noblemen, naturally born to have been principal governors of their countries. Theſe are three afflicted parts of Chriſtendom; the reſt of the ſtates enjoy either proſperity, or tolerable condition. *Portugal.*

THE kingdom of *Scotland*, though at this preſent, by the good regiment and wiſe proceeding of the King, they enjoy good quiet; yet ſince our peace, it hath paſſed through no ſmall troubles, and remaineth full of boiling and ſwelling humours; but like, by the maturity of the ſaid King every day encreaſing, to be repreſſed. Proſperous as *Scotland.*

THE kingdom of *Poland* is newly recovered out of great wars about an ambiguous election. And beſides, is a ſtate of that compoſition, that their King being elective, they do commonly chuſe rather a ſtranger than one of their own country: A great exception to the flouriſhing eſtate of any kingdom. *Poland.*

THE kingdom of *Swedeland*, beſide their foreign wars upon their confines, the *Muſcovites* and the *Danes*, hath been alſo ſubject to divers inteſtine tumults and mutations, as their ſtories do record. *Sweden.*

THE kingdom of *Denmark* hath good times, eſpecially by the good government of the late King, who maintained the profeſſion of the goſpel; but yet greatly giveth place to the kingdom of *England*, in climate, wealth, fertility, and many other points both of honour and ſtrength. *Denmark.*

THE eſtates of *Italy*, which are not under the dominion of *Spain*, have had peace equal in continuance with ours: except in regard of that which hath paſſed between them and the *Turk*, which hath ſorted to their honour and commendation; but yet they are ſo bridled and over-awed by the *Spaniard*, that poſſeſſeth the two principal members thereof, and that in the two extreme parts, as they be like quillets of freehold, being intermixed in the midſt of a great honour or lordſhip; ſo as their quiet is intermingled, not with jealouſy alone, but with reſtraint. *Italy.*

THE ſtates of *Germany* have had for the moſt part peaceable times; but yet they yield to the ſtate of *England*; not only in the great honour of a great kingdom, (they being of a mean ſtyle and dignity) but alſo in many other reſpects both of wealth and policy. *Germany.*

THE ſtate of *Savoy* having been in the old Duke's time governed in good proſperity, hath ſince, notwithſtanding their new great alliance with *Spain*, whereupon they waxed inſolent, to deſign to ſnatch up ſome piece of *France*; after the diſhonourable repulſe from the ſiege of *Geneva*, being often diſtreſſed by a particular gentleman of *Dauphiny*; and at this preſent day the duke feeleth, even in *Piedmont* beyond the mountains, the weight of the ſame enemy: who hath lately ſhut up the gates and common entries between *Savoy* and *Piedmont*. *Savoy.*

So as hitherto I do not ſee but that we are as much bound to the mercies

of

of God as any other nation; conſidering that the fires of diſſenſion and oppreſſion in ſome parts of Chriſtendom, may ſerve us for lights to ſhew us our happineſs; and the good eſtates of other places, which we do congratulate with them for, is ſuch, nevertheleſs, as doth not ſtain and exceed ours; but rather doth ſtill leave ſomewhat, wherein we may acknowledge more than ordinary benediction of God.

Spain. LASTLY, we do not much emulate the greatneſs and glory of the *Spaniards*; who having not only excluded the purity of religion, but alſo fortified againſt it, by their device of the inquiſition, which is a bulwark againſt the entrance of the truth of God; having in recompence of their new purchaſe of *Portugal*, loſt a great part of their ancient patrimonies of the *Low-Countries*, (being of far greater commodity and value) or at the leaſt, holding part thereof in ſuch ſort as moſt of their other revenues are ſpent there upon their own; having lately, with much difficulty, rather ſmoothed and ſkinned over, than healed and extinguiſhed the commotions of *Aragon*; having rather ſowed troubles in *France*, than reaped aſſured fruit thereof unto themſelves; having from the attempt of *England* received ſcorn and diſreputation; being at this time with the ſtates of *Italy* rather ſuſpected than either loved or feared; having in *Germany* and elſewhere, rather much practice, than any ſound intelligence or amity; having no ſuch clear ſucceſſion as they need object, and reproach the uncertainty thereof unto another nation; have in the end won a reputation rather of ambition than juſtice; and in the purſuit of their ambition, rather of much enterpriſing than of fortunate atchieving; and in their enterpriſing, rather of doing things by treaſure and expence, than by forces and valour.

Now that I have given the reader a taſte of *England* reſpectively, and in compariſon of the times paſt, and of the ſtates abroad, I will deſcend to examine the libeller's own diviſions, whereupon let the world judge how eaſily and clean this ink, which he hath caſt in our faces, is waſhed off.

THE firſt branch of the pretended calamities of *England*, is the great and wonderful confuſion which he ſaith is in the ſtate of the church; which is ſubdivided again into two parts; the one, the proſecutions againſt the catholicks; the other, the diſcords and controverſies amongſt ourſelves: the former of which two parts I have made an article by itſelf; wherein I have ſet down a clear and ſimple narration of the proceedings of ſtate againſt that ſort of ſubjects; adding this by the way, that there are two extremities in ſtate concerning the cauſes of faith and religion; that is to ſay, the permiſſion of the exerciſes of more religions than one, which is a dangerous indulgence and toleration; the other is the entering and ſifting into mens conſciences when no overt ſcandal is given, which is rigorous and ſtrainable inquiſition; and I avouch the proceedings towards the pretended catholicks, to have been a mean between theſe two extremities, referring the demonſtration thereof unto the aforeſaid narration in the articles following.

Concerning the controverſy of our church.

TOUCHING the diviſions in our church, the libeller affirmeth that the proteſtantical Calviniſm (for ſo it pleaſeth him with very good grace to term the religion with us eſtabliſhed) is grown contemptible, and detected of idolatry and hereſy, and many other ſuperſtitious abuſes, by a purified ſort of profeſſors of the ſame goſpel. And this contention is yet grown to be more intricate, by reaſon of a third kind of goſpellers called *Browniſts*: who being directed by the great fervour of the unholy ghoſt, do expreſly affirm, that the proteſtantical church of *England* is not gathered in the name of Chriſt, but of antichriſt; and that if the prince or magiſtrate under her do refuſe or de-

fer

fer to reform the church, the people may, without her conſent, take the reformation into their own hands: and hereto he addeth the fanatical pageant of *Hacket*. And this is the effect of this accuſation in this point.

For anſwer whereunto; firſt, it muſt be remembred that the church of God hath been in all ages ſubject to contentions and ſchiſms: the tares were not ſown but where the wheat was ſown before. Our Saviour Chriſt delivereth it for an ill note to have outward peace, ſaying, when a ſtrong man is in poſſeſſion of the houſe (meaning the devil) all things are in peace. It is the condition of the church to be ever under trials; and there are but two trials; the one of perſecution, the other of ſcandal and contention; and when the one ceaſeth, the other ſucceedeth: nay there is ſcarce any one epiſtle of St. *Paul*'s unto the churches, but containeth ſome reprehenſion of unneceſſary and ſchiſmatical controverſies. So likewiſe in the reign of *Conſtantine* the great, after the time that the church had obtained peace from perſecution, ſtrait entered ſundry queſtions and controverſies, about no leſs matters than the eſſential parts of the faith, and the high myſteries of the Trinity. But reaſon teacheth us that in ignorance and implied belief, it is eaſy to agree as colours agree in the dark: or if any country decline into atheiſm, then controverſies wax dainty, becauſe men do think religion ſcarce worth the falling out for; ſo as it is weak divinity to account controverſies an ill ſign in the church.

It is true that certain men, moved with an inconſiderate deteſtation of all ceremonies or orders, which were in uſe in time of the *Roman* religion (as if they were without difference ſuperſtitious or polluted) and led with an affectionate imitation of the government of ſome proteſtant churches in foreign ſtates; have ſought by books and preaching indiſcreetly, and ſometimes undutifully, to bring in an alteration in the external rites and policy of the church; but neither have the grounds of the controverſies extended unto any point of faith; neither hath the preſſing and proſecution exceeded, in the generality, the nature of ſome inferior contempts: ſo as they have been far from hereſy and ſedition, and therefore rather offenſive than dangerous to the church or ſtate.

And as for thoſe which we call *Browniſts*, being when they were at the moſt a very ſmall number of very ſilly and baſe people, here and there in corners diſperſed, they are now (thanks be to God) by the good remedies that have been uſed, ſuppreſſed and worn out; ſo as there is ſcarce any news of them. Neither had they been much known at all, had not *Brown* their leader written a pamphlet, wherein, as it came into his head, he inveighed more againſt logick and rhetorick, than againſt the ſtate of the church, (which writing was much read;) and had not alſo one *Barrow* (being a gentleman of a good houſe, but one that lived in *London* at Ordinaries, and there learned to argue in table-talk, and ſo was very much known in the city and abroad) made a leap from a vain and libertine youth, to a preciſeneſs in the higheſt degree; the ſtrangeneſs of which alteration made him very much ſpoken of; the matter might long before have breathed out. And here I note an honeſty and diſcretion in the libeller, which I note no where elſe; in that he did forbear to lay to our charge the ſect of the family of love; for about twelve years ſince there was creeping in, in ſome ſecret places of the realm, indeed a very great hereſy derived from the *Dutch*, and named as was before ſaid; which ſince, by the good bleſſing of God, and by the good ſtrength of our church, is baniſhed and extinct. But ſo much we ſee, that the diſeaſes wherewith our church hath been viſited, whatſoever theſe men ſay, have either not been malign and dan-

gerous, or elſe they have been as bliſters in ſome ſmall ignoble part of the body, which have ſoon after fallen and gone away. For ſuch alſo was the phrenetical and fanatical (for I mean not to determine it) attempt of *Hacket*, who muſt needs have been thought a very dangerous heretic, that could never get but two diſciples; and thoſe, as it ſhould ſeem, periſhed in their brain; and a dangerous commotioner, that in ſo great and populous a city as *London* is, could draw but thoſe ſame two fellows, whom the people rather laugh'd at as a may-game, than took any heed of what they did or ſaid: ſo as it was very true that an honeſt poor woman ſaid when ſhe ſaw *Hacket* out of a window paſs to his execution; ſaid ſhe to her ſelf, it was foretold that in the latter days there ſhould come thoſe that have deceived many; but in faith thou haſt deceived but a few.

BUT it is manifeſt untruth which the libeller ſetteth down, that there hath been no puniſhment done upon thoſe which in any of the foreſaid kinds have broken the laws, and diſturbed the church and ſtate; and that the edge of the law hath been only turned upon the pretended catholicks: for the examples are very many, where, according to the nature and degree of the offence, the correction of ſuch offenders hath not been neglected.

THESE be the great confuſions whereof he hath accuſed our church, which I refer to the judgment of an indifferent and underſtanding perſon, how true they be: my meaning is not to blanch or excuſe any fault of our church; nor on the other ſide, to enter into commemoration, how flouriſhing it is in great and learned divines, or painful and excellent preachers; let men have the reproof of that which is amiſs, and God the glory of that which is good. And ſo much for the firſt branch.

Concerning the foreign enemies of this ſtate.

IN the ſecond branch, he maketh great muſters and ſhews of the ſtrength and multitude of the enemies of this ſtate; declaring in what evil terms and correſpondence we ſtand with foreign ſtates, and how deſolate and deſtitute we are of friends and confederates, doubting belike, how he ſhould be able to prove and juſtify his aſſertion touching the preſent miſeries; and therefore endeavouring at the leaſt to maintain, that the good eſtate which we enjoy, is yet made ſomewhat bitter by reaſon of many terrors and fears. Whereupon entering into conſideration of the ſecurity, wherein not by our own policy, but by the good providence and protection of God we ſtand at this time, I do find it to be a Security of that nature and kind, which *Iphicrates* the *Athenian* did commend; who being a commiſſioner to treat with the ſtate of *Sparta* upon conditions of peace, and hearing the other ſide make many propoſitions touching ſecurity, interrupted them and told them, there was but one manner of ſecurity whereupon the *Athenians* could reſt; which was, if the deputies of the *Lacedaemonians* could make it plain unto them, that after theſe, and theſe things parted withal, the *Lacedaemonians* ſhould not be able to hurt them though they would. So it is with us, as we have not juſtly provoked the hatred or enmity of any other ſtate, ſo howſoever that be, I know not at this time the enemy that hath power to offend us though he had the will.

AND whether we have given juſt cauſe of quarrel or offence, it ſhall be afterwards touched in the fourth article, touching the true cauſes of the diſturbance of the quiet of Chriſtendom; as far as it is fit to juſtify the actions of ſo high a prince upon the occaſion of ſuch a libel as this. But now concerning the power and forces of any enemy, I do find that *England* hath ſometimes apprehended with jealouſy, the confederation between *France* and *Scotland*; the one being upon the ſame continent that we are, and breeding

breeding a ſoldier of puiſſance and courage, not much differing from the *Engliſh:* the other a kingdom very opulent, and thereby able to ſuſtain wars, though at very great charge; and having a brave nobility; and being a near neighbour. And yet on this conjunction there never came any offence of moment: but *Scotland* was ever rather uſed by *France* as a diverſion of an *Engliſh* invaſion upon *France*, than as a commodity of a *French* invaſion upon *England*. I confeſs alſo, that ſince the unions of the kingdom of *Spain*, and during the time the kingdom of *France* was in his entire, a conjunction of thoſe two potent kingdoms againſt us might have been of ſome terror to us. But now it is evident, that the ſtate of *France* is ſuch as both thoſe conjunctions are become impoſſible: it reſteth that either *Spain* with *Scotland* ſhould offend us, or *Spain* alone. For *Scotland* (thanks be to God) the amity and intelligence is ſo ſound and ſecret between the two crowns, being ſtrengthened by conſent in religion, nearneſs of blood, and continual good offices reciprocally on either ſide, as the *Spaniard* himſelf, in his own plot, thinketh it eaſier to alter and overthrow the preſent ſtate of *Scotland*, than to remove and divide it from the amity of *England*. So as it muſt be *Spain* alone that we ſhould fear, which ſhould ſeem by reaſon of its ſpacious dominions, to be a great overmatch. The conceit whereof maketh me call to mind the reſemblance of an ancient writer in phyſick; who labouring to perſuade that a phyſician ſhould not doubt ſometimes to purge his patient, though he ſee him very weak; entereth into a diſtinction of weakneſs; and ſaith, there is a weakneſs of ſpirit, and a weakneſs of body; the latter whereof he compareth unto a man that were otherwiſe very ſtrong, but had a great pack on his neck, ſo great as made him double again, ſo as one might thruſt him down with his finger: which ſimilitude and diſtinction both may be fitly applied to matter of ſtate; for ſome ſtates are weak through want of means, and ſome weak through exceſs of burthen; in which rank I do place the ſtate of *Spain*, which having out-compaſſed itſelf in embracing too much; and being it ſelf but a barren ſeed-plot of ſoldiers, and much decayed and exhauſted of men by the *Indies*, and by continual wars; and as to the ſtate of their treaſure, being indebted and engaged before ſuch times as they waged ſo great forces in *France* (and therefore much more ſince,) is not in brief an enemy to be feared by a nation ſeated, manned, furniſhed, and policed as is *England*.

NEITHER is this ſpoken by gueſs, for the experience was ſubſtantial enough, and of freſh memory in the late enterprize of *Spain* upon *England:* what time all that goodly ſhipping, which in that voyage was conſumed, was complete; what time his forces in the *Low-Countries* was alſo full and entire, which now are waſted to a fourth part; what time alſo he was not entangled with the matters of *France*, but was rather like to receive aſſiſtance than impediment from his friends there, in reſpect of the great vigour wherein the league then was, while the duke of *Guiſe* then lived; and yet nevertheleſs this great preparation paſſed away like a dream. The invincible navy neither took any one barque of ours, neither yet once offered to land; but after they had been well beaten and chaſed, made a perambulation about the northern ſeas; ennobling many coaſts with wrecks of mighty ſhips; and ſo returned home with greater deriſion than they ſet forth with expectation.

So as we ſhall not need much confederacies and ſuccours, (which he ſaith we want for the breaking of the *Spaniſh* invaſion:) no, though the *Spaniard* ſhould

ſhould neſtle in *Britain*, and ſupplant the *French*, and get ſome port-towns into their hands there, (which is yet far off;) yet ſhall he never be ſo commodiouſly ſeated to annoy us, as if he had kept the *Low-Countries*: and we ſhall rather fear him as a wrangling neighbour, that may treſpaſs now and then upon ſome ſtraggling ſhips of ours, than as an invader. And as for our confederacies, God hath given us both means and minds to tender and relieve the ſtates of others: And therefore our confederacies are rather of honour than ſuch as we depend upon. And yet nevertheleſs the apoſtata's and huguenots of *France* on the one part, (for ſo he termeth the whole nobility in a manner of *France*, among the which a great part is of his own religion; which maintain the clear and unblemiſhed title of their lawful and natural King againſt the ſeditious populace;) and the beer-brewers and baſket-makers of *Holland* and *Zealand* (as he alſo terms them) on the other, have almoſt bandied away between them all the duke of *Parma*'s forces: and I ſuppoſe the very mines of the *Indies* will go low, or ever the one be ruined, or the other recovered. Neither again deſire we better confederacies and leagues than *Spain* itſelf hath provided for us: *Non enim verbis foedera confirmantur, ſed iiſdem utilitatibus.* We know to how many ſtates the King of *Spain* is odious and ſuſpected; and for our ſelves we have incenſed none by our injuries, nor made any jealous of our ambition: theſe are in rules of policy the firmeſt contracts.

Let thus much be ſaid in anſwer of the ſecond branch, concerning the number of the exterior enemies: wherein my meaning is nothing leſs than to attribute our felicity to our policy; or to nouriſh our ſelves in the humour of ſecurity. But I hope we ſhall depend upon God and be vigilant; and then it will be ſeen to what end theſe falſe alarms will come.

In the third branch of the miſeries of *England*, he taketh upon him to play the prophet, as he hath in all the reſt played the poet; and will needs divine or prognoſticate the great troubles, whereunto this realm ſhall fall after her Majeſty's times; as if he that hath ſo ſingular a gift in lying of the preſent time and times paſt, had nevertheleſs an extraordinary grace in telling truth of the time to come; or, as if the effect of the Pope's curſes of *England* were upon better advice adjourned to thoſe days. It is true, it will be miſery enough for this realm (whenſoever it ſhall be) to loſe ſuch a ſovereign: but for the reſt, we muſt repoſe our ſelves upon the good-pleaſure of God. So it is an unjuſt charge in the libeller to impute an accident of ſtate to the fault of the government.

It pleaſeth God ſometimes, to the end to make men depend upon him the more, to hide from them the clear ſight of future events; and to make them think that full of uncertainties which proveth certain and clear: and ſometimes on the other ſide, to croſs men's expectations, and to make them full of difficulty and perplexity in that which they ought to be eaſy and aſſured. Neither is it any new thing for the titles of ſucceſſion in monarchies to be at times leſs or more declared. King *Sebaſtian* of *Portugal*, before his journey into *Africk*, declared no ſucceſſor. The cardinal, though he were of extreme age, and were much importuned by the King of *Spain*, and knew directly ſix or ſeven competitors to that crown, yet he rather eſtabliſhed I know not what interims, than decided the titles, or deſigned any certain ſucceſſor. The dukedom of *Ferrara* is at this day, after the death of the prince that now liveth, uncertain in the point of ſucceſſion: the kingdom of *Scotland* hath declared no ſucceſſor. Nay, it is very rare in hereditary monarchies, by any act of ſtate, or any recognition or oath of the people in the collateral line, to eſtabliſh a ſucceſſor. The duke of *Orleans* ſucceeded

ceeded *Charles* VIII. of *France*, but was never declared ſucceſſor in his time. Monſieur *d'Angouleſme* alſo ſucceeded him, but without any deſignation. Sons of Kings themſelves oftentimes, through deſire to reign and to prevent their time, wax dangerous to their parents: how much more couſins in a more remote degree? It is lawful, no doubt, and honourable, if the caſe require, for princes to make an eſtabliſhment: But as it was ſaid, is is rarely practiſed in the collateral line. *Trajan*, the beſt Emperor of *Rome*, of an heathen, that ever was, at what time the emperors did uſe to deſign ſucceſſors, not ſo much to avoid the uncertainty of ſucceſſion, as to the end, to have *participes curarum* for the preſent time, becauſe their empire was ſo vaſt; at what time alſo adoptions were in uſe, and himſelf had been adopted; yet never deſigned a ſucceſſor, but by his laſt will and teſtament, which alſo was thought to be ſuborned by his wife *Plotina*, in the favour of her lover *Adrian*.

You may be ſure that nothing hath been done to prejudice the right; and there can be but one right. But one thing I am perſuaded of, that no King of *Spain* nor Biſhop of *Rome*, ſhall umpire, or promote any beneficiary, or feodatory King, as they deſign'd to do; even when the *Scots* Queen lived, whom they pretended to cheriſh. I will not retort the matter of ſucceſſion upon *Spain*, but uſe that modeſty and reverence, that belongeth to the Majeſty of ſo great a King, though an enemy. And ſo much for this third branch.

The fourth branch he maketh to be touching the overthrow of the nobility and the oppreſſion of the people: wherein though he may, percaſe, abuſe the ſimplicity of any foreigner; yet to an *Engliſhman*, or any that heareth of the preſent condition of *England*, he will appear to be a man of ſingular audacity, and worthy to be employed in the defence of any paradox. But ſurely if he would needs have defaced the general ſtate of *England*, at this time, he ſhould in wiſdom rather have made ſome friarly declamation againſt the exceſs of ſuperfluity and delicacy of our times, than to have inſiſted upon the miſery and poverty and depopulation of the land, as may ſufficiently appear by that which hath been ſaid.

Concerning the ſtate of the nobility.

But nevertheleſs, to follow this man in his own ſteps: Firſt, concerning the nobility; it is true, that there have been in ages paſt, noblemen (as I take it) both of greater poſſeſſions and of greater command and ſway than any are at this day. One reaſon why the poſſeſſions are leſs, I conceive to be, becauſe certain ſumptuous veins and humours of expence (as apparel, gaming, maintaining of a kind of followers, and the like) do reign more than they did in times paſt. Another reaſon is, becauſe noblemen now-a-days do deal better with their younger ſons than they were accuſtomed to do heretofore, whereby the principal houſe receiveth many abatements. Touching the command, which is not indeed ſo great as it hath been, I take it rather to be a commendation of the time, than otherwiſe: For men were wont factiouſly to depend upon noblemen, whereof enſued many partialities and diviſions, beſides much interruption of juſtice, while the great ones did ſeek to bear out thoſe that did depend upon them. So as the Kings of this realm, finding long ſince that kind of commandment in noblemen unſafe unto their crown, and inconvenient unto their people, thought meet to reſtrain the ſame by proviſion of laws; whereupon grew the ſtatute of retainers; ſo as men now depend upon the prince and the laws, and upon no other: a matter which hath alſo a congruity with the nature of the time, as may be ſeen in other countries; namely, in *Spain*, where their grandees are nothing ſo

potent and ſo abſolute as they have been in times paſt. But otherwiſe, it may be truly affirmed, that the rights and preheminencies of the nobility were never more duly and exactly preſerved unto them, than they have been in her Majeſty's time; the precedence of knights given to the younger ſons of barons; no *ſubpœna's* awarded againſt the nobility out of the chancery, but letters; no anſwer upon oath, but upon honour: beſides a number of other privileges in parliament, court and country. So likewiſe for the countenance of her Majeſty and the ſtate, in lieutenancies, commiſſions, offices, and the like, there was never a more honourable and graceful regard had of the nobility; neither was there ever a more faithful remembrancer and exacter of all theſe particular preheminencies unto them; nor a more diligent ſearcher and regiſter of their pedigrees, alliances, and all memorials of honour than that man, whom he chargeth to have overthrown the nobility; becauſe a few of them by immoderate expence are decayed, according to the humour of the time, which he hath not been able to reſiſt, no not in his own houſe. And as for attainders, there have been in thirty five years but five of any of the nobility, whereof but two came to execution; and one of them was accompanied with reſtitution of blood in the children: yea all of them, except *Weſtmoreland*, were ſuch, as whether it were by favour of law or government, their heirs have, or are like to have, a great part of their poſſeſſions: And ſo much for the nobility.

TOUCHING the oppreſſion of the people, he mentioneth four points.

1. THE conſumption of people in the wars.
2. THE interruption of traffick.
3. THE corruption of juſtice.

Concerning the ſtate of the common ſubject.

4. THE multitude of taxations. Unto all which points there needeth no long ſpeech. For the firſt, (thanksbe to God) the benediction of *Creſcite* and *Multiplicamini*, is not ſo weak upon this realm of *England*, but the population thereof may afford ſuch loſs of men as were ſufficient for the making our late wars, and were in a perpetuity, without being ſeen either in city or country. We read, that when the *Romans* did take cenſe of their people, whereby the citizens were numbered by the poll in the beginning of a great war; and afterwards again at the ending, there ſometimes wanted a third part of the number: but let our muſter-books be peruſed, (thoſe, I ſay, that certify the number of all fighting men in every ſhire) *in viceſimo* of the Queen; at what time, except a handful of ſoldiers in the *Low-Countries*, we expended no men in the wars; and now again, at this preſent time, and there will appear ſmall diminution. There be many tokens in this realm rather of preſs and ſurcharge of people, than of want and depopulation, which were before recited. Beſides, it is a better condition of inward peace to be accompanied with ſome exerciſe of no dangerous war in foreign parts, than to be utterly without apprentiſage of war, whereby people grow effeminate and unpractiſed when occaſion ſhall be. And it is no ſmall ſtrength unto the realm, that in theſe wars of exerciſe and not of peril, ſo many of our people are trained, and ſo many of our nobility and gentlemen have been made excellent leaders both by ſea and land. As for that he objecteth, we have no proviſion for ſoldiers at their return; though that point hath not been altogether neglected, yet I wiſh with all my heart, that it were more ample than it is; though I have read and heard, that in all eſtates upon caſheering and diſbanding of ſoldiers, many have endured neceſſity.

FOR the ſtopping of traffick, as I referred my ſelf to the muſter-books for the firſt, ſo I refer my ſelf to the cuſtom-books, upon this, which will not lye,

lye, and do make demonſtration of no abatement at all in theſe laſt years, but rather of riſing and increaſe. We know of many in *London* and other places that are within a ſmall time greatly come up and made rich by merchandizing: and a man may ſpeak within his compaſs, and affirm, that our prizes by ſea have countervailed any prizes upon us.

And as to the juſtice of this realm, it is true, that cunning and wealth hath bred many ſuits and debates in law. But let thoſe points be conſidered: the integrity and ſufficiency of thoſe which ſupply the judicial places in the Queen's courts; the good laws that have been made in her Majeſty's times againſt informers and promoters; and for the bettering of trials; the example of ſeverity which is uſed in the *Star-Chamber*, in oppreſſing forces and frauds; the diligence and ſtoutneſs that is uſed by juſtices of aſſizes, in encountring all countenancing and bearing of cauſes in the country by their authorities and wiſdom; the great favours that have been uſed towards copy-holders and cuſtomary tenants, which were in ancient times merely at the diſcretion and mercy of the Lord; and are now continually relieved from hard dealing in chancery and other courts of equity: I ſay, let theſe and many other points be conſidered; and men will worthily conceive an honourable opinion of the juſtice of *England*.

Now to the points of levies and diſtributions of money, which he calleth exactions. Firſt, very coldly, he is not abaſhed to bring in the gathering for *Paul*'s ſteeple and the lottery trifles: whereof the former being but a voluntary collection of that men were freely diſpoſed to give, never grew to ſo great a ſum as was ſufficient to finiſh the work, for which it was appointed: and ſo I imagine, it was converted into ſome other uſe; like to that gathering which was for the fortifications of *Paris*; ſave that the gathering for *Paris* came to a much greater, though (as I have heard) no competent ſum. And for the lottery, it was but a novelty deviſed and followed by ſome particular perſons, and only allowed by the ſtate, being as a gain of hazard: wherein if any gain was, it was becauſe many men thought ſcorn after they had fallen from their greater hopes to fetch their old money. Then he mentioneth loans and privy ſeals: wherein he ſheweth great ignorance and indiſcretion, conſidering the payments back again have been very good and certain, and much for her Majeſty's honour. Indeed, in other princes times it was not wont to be ſo. And therefore, though the name be not ſo pleaſant, yet the uſe of them in our times have been with ſmall grievance. He reckoneth alſo new cuſtoms upon cloaths, and new impoſt upon wines. In that of cloaths he is deceived; for the ancient rate of cuſtom upon cloaths was not raiſed by her Majeſty, but by Queen *Mary*, a catholick Queen: and hath been commonly continued by her Majeſty; except he mean the computation of the odd yards, which in ſtrict duty, was ever anſwerable, though the error were but lately looked into, or rather the toleration taken away. And to that of wines, being a foreign merchandize, and but a delicacy, and of thoſe which might be forborn, there hath been ſome increaſe of impoſition, which can rather make the price of wine higher than the merchant poorer. Laſtly, touching the number of ſubſidies, it is true, that her Majeſty, in reſpect of the great charges of her wars, both by ſea and land, againſt ſuch a lord of treaſure, as is the King of *Spain*; having for her part no *Indies* or mines; and the revenues of the crown of *England* being ſuch, as they leſs grate upon the people, than the revenues of any crown or ſtate in *Europe*, hath by the aſſent of parliament, according to the ancient cuſtoms of this realm, received divers ſubſidies of her people, which as they have been employed upon

upon the defence and preſervation of the ſubject, not upon exceſſive buildings, nor upon immoderate donatives, nor upon triumphs and pleaſures; or any the like veins of diſſipation of treaſure, which have been familiar to many Kings: ſo have they been yielded with great good will and chearfulneſs, as may appear by other kinds of benevolence, preſented to her likewiſe in parliament; which her Majeſty nevertheleſs hath not put in ure. They have been taxed alſo and aſſeſſed with a very light and gentle hand; and they have been ſpared as much as may be, as may appear in that her Majeſty now twice to ſpare the ſubject, hath ſold off her own lands. But he that ſhall look into other countries and conſider the taxes, and talliages, and impoſitions, and aſſizes, and the like, that are every where in uſe, will find that the *Engliſh* man is the moſt maſter of his own valuation, and the leaſt bitten in his purſe of any nation of *Europe*. Nay even at this inſtant in the kingdom of *Spain*, notwithſtanding the pioneers do ſtill work in the *Indian* mines, the Jeſuits moſt play the pioneers and mine into the *Spaniards* purſes; and under the colour of a ghoſtly exhortation, contrive the greateſt exaction that ever was in any realm.

THUS much in anſwer of theſe calumniations I have thought good to note touching the preſent ſtate of *England*; which ſtate is ſuch, that whoſoever hath been an architect in the frame thereof, under the bleſſing of God, and the virtues of our Sovereign, needed not to be aſhamed of his work.

3. OF the proceedings againſt the pretended catholicks, whether they have been violent, or moderate and neceſſary.

I FIND her Majeſty's proceedings generally to have been grounded upon two principles: the one,

THAT conſciences are not to be forced, but to be won and reduced by the force of truth, by the aid of time, and the uſe of all good means of inſtruction or perſuaſion: The other,

THAT cauſes of conſcience when they exceed their bounds, and prove to be matter of faction, loſe their nature; and that ſovereign princes ought diſtinctly to puniſh the practice or contempt, though coloured with the pretences of conſcience and religion.

ACCORDING to theſe two principles her Majeſty, at her coming to the crown, utterly diſliking of the tyranny of the church of *Rome*, which had uſed by terror and rigor to ſeek commandment over mens faiths and conſciences; although as a prince of great wiſdom and magnanimity, ſhe ſuffered but the exerciſe of one religion, yet her proceedings towards the papiſts were with great lenity, expecting the good effects which time might work in them.

AND therefore her Majeſty revived not the laws made in 28. and 35. of her father's reign, whereby the oath of ſupremacy might have been offered at the King's pleaſure to any ſubject, though he kept his conſcience never ſo modeſtly to himſelf; and the refuſal to take the ſame oath, without farther circumſtance, was made treaſon: but contrariwiſe, her Majeſty not liking to make windows into mens hearts and ſecret thoughts, except the abundance of them did overflow into overt and expreſs acts and affirmations, tempered her law ſo, as it reſtraineth only manifeſt diſobedience in impugning and impeaching adviſedly and ambitiouſly her Majeſty's ſupreme power, and maintaining and extolling a foreign juriſdiction. And as for the oath, it was altered by her Majeſty into a more grateful form; the harſhneſs of the name,

and

and appellation of ſupreme head was removed; and the penalty of the refuſal thereof turned into a diſablement to take any promotion, or to exerciſe any charge; and yet that with a liberty of being reveſted therein, if any man ſhall accept thereof during his life.

But after many years toleration of a multitude of factious papiſts, when *Pius Quintus* had excommunicated her Majeſty, and the bill of excommunication was publiſhed in *London*, whereby her Majeſty was in a ſort proſcribed, and all her ſubjects drawn upon pain of damnation from her obedience; and that thereupon, as upon a principal motive or preparative, followed the rebellion in the north; yet notwithſtanding, becauſe many of thoſe evil humours were by that rebellion partly purged, and that ſhe feared at that time no foreign invaſion, and much leſs the attempts of any within the realm; not backed by ſome foreign ſuccours from without, ſhe contented her ſelf to make a law againſt that ſpecial caſe of bringing in, or publiſhing of bulls or the like inſtruments; whereunto was added, a prohibition, not upon pain of treaſon, but of an inferior degree of puniſhment, againſt bringing in of *Agnus Dei's*, hallowed beads, and ſuch other merchandize of *Rome*, as are well known not to be any eſſential part of the *Roman* religion, but only to be uſed in practice as love-tokens, to enchant and bewitch the people's affections from their allegiance to their natural ſovereign. In all other points her Majeſty continued her former lenity.

But when about the twentieth year of her reign ſhe had diſcovered in the King of *Spain* an intention to invade her dominions, and that a principal point of the plot was to prepare a party within the realm that might adhere to the foreigner; and that the ſeminaries began to bloſſom and to ſend forth daily prieſts and profeſſed men, who ſhould by vow taken at ſhrift, reconcile her ſubjects from her obedience; yea, and bind many of them to attempt againſt her Majeſty's ſacred perſon; and that by the poiſon they ſpread, the humours of moſt papiſts were altered, and that they were no more papiſts in cuſtom, but papiſts in treaſonable faction: then were there new laws made for the puniſhment of ſuch as ſhould ſubmit themſelves to reconcilements or renunciations of obedience. For it is to be underſtood, that this manner of reconcilement in confeſſion, is of the ſame nature and operation that the bull it ſelf was of, with this only difference, that whereas the bull aſſoiled the ſubjects from their obedience at once, the other doth it one by one. And therefore it is both more ſecret, and more inſinuative into the conſcience, being joined with no leſs matter than an abſolution from mortal ſin. And becauſe it was a treaſon carried in the clouds, and in wonderful ſecrecy, and came ſeldom to light; and that there was no preſumption thereof ſo great as the recuſants to come to divine ſervice, becauſe it was ſet down by their decrees, that to come to church before reconcilement, was to live in ſchiſm; but to come to church after reconcilement, was abſolutely heretical and damnable: Therefore there were added new laws, containing a puniſhment pecuniary againſt the recuſants, not to enforce conſciences, but to enfeeble thoſe of whom it reſted indifferent and ambiguous, whether they were reconciled or no? For there is no doubt, but if the law of recuſancy (which is challenged to be ſo extreme and rigorous) were thus qualified, that any recuſant that ſhall voluntarily come in and take his oath, that he or ſhe were never reconciled, ſhould immediately be diſcharged of the penalty and forfeiture of the law; they would be ſo far from liking well of that mitigation, as they would cry out it was made to entrap them. And when notwithſtanding all this proviſion, this poiſon was diſperſed ſo ſecretly, as that there were no means to

ſtay it, but to reſtrain the merchants that brought it in. Then was there laſtly added a law, whereby ſuch ſeditious prieſts of the new erection were exiled; and thoſe that were at that time within the land ſhipped over, and ſo commanded to keep hence upon pain of treaſon.

This hath been the proceeding with that ſort, though intermingled not only with ſundry examples of her Majeſty's grace, towards ſuch as in her wiſdom ſhe knew to be papiſts in conſcience, and not in faction; but alſo with an extraordinary mitigation towards the offenders in the higheſt degree convicted by law, if they would proteſt, that in caſe this realm ſhould be invaded with a foreign army, by the pope's authority, for the catholick cauſe (as they term it), they would take part with her Majeſty, and not adhere to her enemies.

And whereas he ſaith no prieſt dealt in matter of ſtate (*Ballard* only excepted) it appeareth by the records of the confeſſion of the ſaid *Ballard*, and ſundry other prieſts, that all prieſts at that time generally were made acquainted with the invaſion then intended, and afterwards put in act; and had received inſtructions not only to move an expectation in the people of a change, but alſo to take their vows and promiſes in ſhrift to adhere to the foreigner; inſomuch that one of their principal heads vaunted himſelf in a letter of the device, ſaying, that it was a point the council of *England* would never dream of. Who would imagine but that they ſhould practiſe with ſome nobleman to make him head of their faction? whereas they took a courſe only to deal with the people, and them ſo ſeverally, as any one apprehended ſhould be able to appeal to no more than himſelf, except the prieſts, who he knew would reveal nothing that was uttered in confeſſion: So innocent was this princely prieſtly function, which this man taketh to be but a matter of conſcience, and thinketh it reaſon it ſhould have free exerciſe throughout the land.

4. Of the diſturbance of the quiet of Chriſtendom; and to what cauſes it may be juſtly aſſigned.

It is indeed a queſtion (which thoſe that look into matters of ſtate do well know to fall very often; though this libeller ſeemeth to be more ignorant thereof) whether the ambition of the more mighty ſtate, or the jealouſy of the leſs mighty ſtate is to be charged with breach of amity. Hereof, as there may be many examples, ſo there is one ſo proper unto the preſent matter, as though it were many years ſince, yet it ſeemeth to be a parable of theſe times, and namely of the proceedings of *Spain* and *England*.

The ſtates then which anſwered to theſe two, were *Macedon* and *Athens*. Conſider therefore the reſemblance between the two *Philips* of *Macedon* and *Spain*: he of *Macedon* aſpired to the monarchy of *Greece*, as he of *Spain* doth of *Europe*; but more apparently than the firſt, becauſe that deſign was diſcovered in his father *Charles* V. and ſo left him by deſcent; whereas *Philip* of *Macedon* was the firſt of the Kings of that nation which fixed ſo great conceits in his breaſt. The courſe which this King of *Macedon* held was not ſo much by great armies and invaſions (though theſe wanted not when the caſe required) but by practice, by ſowing of factions in ſtates, and by obliging ſundry particular perſons of greatneſs. The ſtate of oppoſition againſt his ambitious proceedings was only the ſtate of *Athens*, as now is the ſtate of *England* againſt *Spain*. For *Lacedaemon* and *Thebes* were both low as *France* is now; and the reſt of the ſtates of *Greece* were in power and territories far inferior. The people of *Athens* were exceedingly affected to peace, and weary

weary of expence. But the point which I chiefly make the compariſon, was that of the orators, which were as counſellors to a popular ſtate; ſuch as were ſharpeſt ſighted, and looked deepeſt into the projects and ſpreading of the *Macedonians* (doubting ſtill that the fire, after it licked up the neighbour ſtates, and made it ſelf opportunity to paſs, would at laſt take hold of the dominions of *Athens* with ſo great advantages as they ſhould not be able to remedy it) were ever charged both by the declarations of the King of *Macedon*, and by the imputation of ſuch *Athenians* as were corrupted to be of his faction, as the kindlers of troubles, and diſturbers of the peace and leagues: but as that party was in *Athens* too mighty, ſo as it diſcountenanced the true counſels of the orators, and ſo bred the ruin of that ſtate, and accompliſhed the ends of that *Philip:* So it is to be hoped that in a monarchy where there are commonly better intelligences and reſolutions than in a popular ſtate, thoſe plots as they are detected already, ſo they will be reſiſted and made fruſtrate.

But to follow the libeller in his own courſe, the ſum of that which he delivereth concerning the imputation, as well of the interruption of the amity between the crowns of *England* and of *Spain*, as the diſturbance of the general peace of Chriſtendom, unto the *Engliſh* proceedings, and not to the ambitious appetites of *Spain*, may be reduced into three points.

1. Touching the proceeding of *Spain* and *England* towards their neighbour ſtates.

2. Touching the proceeding of *Spain* and *England* between themſelves.

3. Touching the articles and conditions which it pleaſeth him as it were in the behalf of *England* to pen and propoſe for the treating and concluding of an univerſal peace.

In the firſt he diſcovereth how the King of *Spain* never offered moleſtation, neither unto the ſtates of *Italy*, upon which he confineth by *Naples* and *Milan*; neither unto the ſtates of *Germany*, unto whom he confineth by a part of *Burgundy* and the *Low-Countries*; nor unto *Portugal*, till it was devolved to him in title, upon which he confineth by *Spain:* but contrariwiſe, as one that had in precious regard the peace of Chriſtendom, he deſigned from the beginning to turn his whole forces upon the *Turk*. Only he confeſſeth, that agreeable to his devotion which apprehended as well the purging of Chriſtendom from hereſies, as the enlarging thereof upon the infidels; he was ever ready to give ſuccours unto the *French* Kings againſt the *Huguenots*, eſpecially being their own ſubjects: whereas on the other ſide *England* (as he affirmeth) hath not only ſowed troubles and diſſenſions in *France* and *Scotland*; (the one their neighbour upon the continent; the other divided only by the narrow ſeas;) but alſo hath actually invaded both kingdoms. For as for the matters of the *Low-Countries*; they belong to the dealings which have paſſed by *Spain*.

In anſwer whereof, it is worthy the conſideration how it pleaſed God in that King to croſs one paſſion by another; and namely, that paſſion which might have proved dangerous unto all *Europe*, (which was ambition) by another which was only hurtful to himſelf and to his own, which was wrath and indignation towards his ſubjects of the *Netherlands*. For after that he was ſettled in his kingdom, and freed from ſome fear of the *Turk*, revolving his father's deſign in aſpiring to the monarchy of *Europe*, caſting his eye principally upon the two potent kingdoms of *France* and *England*; and remembring how his father had once promiſed unto himſelf the conqueſt of the one;

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and how himſelf by marriage had lately had ſome poſſeſſion of the other; and ſeeing that diverſity of religion was entered into both theſe realms; and that *France* was fallen unto princes weak, and in minority; and *England* unto the government of a lady, in whom he did not expect that policy of government, magnanimity and felicity, which ſince he hath proved; concluded (as the *Spaniards* are great waiters upon time, and ground their plots deep) upon two points; the one to profeſs an extraordinary patronage and defence of the *Roman* religion, making account thereby to have factions in both kingdoms: in *England* a faction directly againſt the ſtate; in *France* a faction that did conſent indeed in religion with the King, and therefore at firſt ſhew ſhould ſeem unproper to make a party for a foreigner. But he foreſaw well enough that the King of *France* ſhould be forced (to the end to retain peace and obedience) to yield in ſome things to thoſe of the religion, which would undoubtedly alienate the fiery and more violent ſort of papiſts; which preparation in the people added to the ambition of the family of *Guiſe* (which he nouriſhed for an inſtrument) would in the end make a party for him againſt the ſtate, as ſince it proved, and might well have done long before, as may well appear by the mention of league and aſſociations, which is above twenty five years old in *France*.

THE other point he concluded upon was, that his *Low-Countries* was the apteſt place both for ports and ſhipping, in reſpect of *England*, and for ſituation in reſpect of *France*, having goodly frontier towns upon that realm, and joining alſo upon *Germany*, whereby they might receive in at pleaſure any forces of *Almaigns*, to annoy and offend either kingdom. The impediment was the inclination of the people, which receiving a wonderful commodity of trades out of both realms, eſpecially of *England*; and having been in ancient league and confederacy with our nation, and having been alſo homagers unto *France*, he knew would be in no wiſe diſpoſed to either war: whereupon he reſolved to reduce them to a martial government, like unto that which he had eſtabliſhed in *Naples* and *Milan*; upon which ſuppreſſion of their liberties enſued the defection of thoſe provinces. And about the ſame time the reformed religion found entrance in the ſame countries; ſo as the King enflamed with the reſiſtance he found in the firſt part of his plots, and alſo becauſe he might not diſpenſe with his other principle in yielding to any toleration of religion; and withal expecting a ſhorter work of it than he found, became paſſionately bent to reconquer thoſe countries, wherein he hath conſumed infinite treaſure and forces. And this is the true cauſe, if a man will look into it, that hath made the King of *Spain* ſo good a neighbour; namely, that he was ſo entangled with the wars of the *Low-Countries* as he could not intend any other enterprize. Beſides, in enterprizing upon *Italy*, he doubted firſt the diſpleaſure of the ſee of *Rome*, with whom he meant to run a courſe of ſtrait conjunction; alſo he doubted it might invite the *Turk* to return. And for *Germany* he had a freſh example of his father, who when he had annexed unto the dominions which he now poſſeſſeth, the empire of *Almaign*, nevertheleſs ſunk in that enterprize; whereby he perceived that the nation was of too ſtrong a compoſition for him to deal withal: though not long ſince, by practice, he could have been contented to ſnatch up in the Eaſt the country of *Embden*. For *Portugal*, firſt, the Kings thereof were good ſons to the ſee of *Rome*; next, he had no colour of quarrel or pretence; thirdly, they were officious unto him: yet if you will believe the *Genoeſe*, (who otherwiſe writeth much to the honour and advantage of the Kings of *Spain*,) it ſeemeth he had a good mind to make himſelf a way into

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that kingdom, ſeeing that for that purpoſe (as he reporteth) he did artificially nouriſh the young King *Sebaſtian* in the voyage of *Afric*, expecting that overthrow which followed.

As for his intention to war upon the infidels and *Turks*, it maketh me think what *Francis Guicciardine*, a wiſe writer of hiſtory, ſpeaketh of his great grandfather, making a judgment of him as hiſtoriographers uſe; that he did always maſk and veil his appetites with a demonſtration of a devout and holy intention to the advancement of the church and the publick good. His father alſo, when he received advertiſement of the taking of the *French* King, prohibited all ringings, and bonfires, and other tokens of joy; and ſaid, thoſe were to be reſerved for victories upon infidels, on whom he meant never to war. Many a cruzado hath the biſhop of *Rome* granted to him and his predeceſſors upon that colour, which all have been ſpent upon the effuſion of Chriſtian blood: and now this year the levies of *Germans*, which ſhould have been made underhand for *France*, were coloured with the pretence of war upon the *Turks*; which the princes of *Germany* deſcrying, not only brake the levies, but threatened the commiſſioners to hang the next that ſhould offer the like abuſe: ſo that this form of diſſembling is familiar, and as it were hereditary to the King of *Spain*.

And as for his ſuccours given to the *French* King againſt the Proteſtants, he could not chuſe but accompany the pernicious counſels which ſtill he gave to the *French* King, of breaking their edicts, and admitting of no pacification, but purſuing their ſubjects with mortal war, with ſome offer of aids; which having promiſed, he could not but in ſome ſmall degree perform; whereby alſo the ſubject of *France* (namely the violent papiſt) was inured to depend upon *Spain*. And ſo much for the King of *Spain*'s proceedings towards other ſtates.

Now for ours: And firſt touching the point wherein he chargeth us to be the authors of troubles in *Scotland* and *France*; it will appear to any that have been well informed of the memoirs of theſe affairs, that the troubles of thoſe kingdoms were indeed chiefly kindled by one and the ſame family of the *Guiſe*: a family (as was partly touched before) as particularly devoted now for many years together to *Spain*, as the order of the Jeſuits is. This houſe of *Guiſe* having of late years extraordinarily flouriſhed in the eminent virtue of a few perſons, whoſe ambition nevertheleſs was nothing inferior to their virtue; but being of a houſe, notwithſtanding, which the princes of the blood of *France* reckoned but as ſtrangers, aſpired to a greatneſs more than civil and proportionable to their cauſe, whereſoever they had authority: and accordingly, under colour of conſanguinity and religion, they brought into *Scotland* in the year 1559, and in the abſence of the King and Queen, *French* forces in great numbers; whereupon the ancient nobility of that realm ſeeing the imminent danger of reducing that kingdom under the tyranny of ſtrangers, did pray (according to the good intelligence between the two crowns) her Majeſty's neighbourly forces. And ſo it is true that the action being very juſt and honourable, her Majeſty undertook it, expelled the ſtrangers, and reſtored the nobility to their degrees, and the ſtate to peace.

After, when certain noblemen of *Scotland* of the ſame faction of *Guiſe* had, during the minority of the King, poſſeſſed themſelves of his perſon, to the end to abuſe his authority many ways; and namely, to make a breach between *Scotland* and *England*: her Majeſty's forces were again in the year 1582, by the King's beſt and trueſt ſervants, ſought and required: and with

the forces of her Majeſty prevailed ſo far, as to be poſſeſſed of the caſtle of *Edinburgh*, the principal part of that kingdom; which nevertheleſs her Majeſty incontinently with all honour and ſincerity reſtored, after ſhe had put the King into good and faithful hands: and ſo ever ſince, in all the occaſions of inteſtine troubles, whereunto that nation hath been ever ſubject, ſhe hath performed unto the King all poſſible good offices, and ſuch as he doth with all good affection acknowledge.

THE ſame houſe of *Guiſe*, under colour of alliance, during the reign of *Francis* the ſecond, and by the ſupport and practice of the Queen-mother; who deſiring to retain the regency under her own hands during the minority of *Charles* the ninth, uſed thoſe of *Guiſe* as a counterpoiſe to the princes of the blood, obtained alſo great authority in the kingdom of *France*: whereupon having raiſed and moved civil wars under pretence of religion, but indeed to enfeeble and depreſs the ancient nobility of that realm; the contrary part being compounded of the blood royal and the greateſt officers of the crown, oppoſed themſelves only againſt their inſolency; and to their aids called in her Majeſty's forces, giving them for ſecurity the town of *New-Haven*: which nevertheleſs, when as afterwards having by the reputation of her Majeſty's confederation, made their peace in effect as they would themſelves, they would, without obſerving any conditions that had paſſed, have had it back again: then indeed it was held by force, and ſo had been long but for the great mortality which it pleaſed God to ſend amongſt our men. After which time, ſo far was her Majeſty from ſeeking to ſow or kindle new troubles; as continually, by the ſollicitation of her embaſſadors, ſhe ſtill perſuaded with the Kings, both *Charles* IX. and *Henry* III. to keep and obſerve their edicts of pacification, and to preſerve their authority by the union of their ſubjects: which counſel, if it had been as happily followed as it was prudently and ſincerely given, *France* had been at this day a moſt flouriſhing kingdom, which is now a theatre of miſery: And now in the end, after that the ambitious practices of the ſame houſe of *Guiſe* had grown to that ripeneſs, that gathering farther ſtrength upon the weakneſs and miſgovernment of the ſaid King *Henry* III. he was fain to execute the Duke of *Guiſe* without ceremony at *Blois*. And yet nevertheleſs, ſo many men were embarqued and engaged in that conſpiracy, as the flame thereof was nothing aſſuaged; but contrariwiſe, that King *Henry* grew diſtreſſed, ſo as he was enforced to implore the ſuccours of *England* from her Majeſty, though no way intereſted in that quarrel, nor any way obliged for any good offices ſhe had received of that King, yet ſhe accorded the ſame: Before the arrival of which forces the King being by a ſacrilegious Jacobine murthered in his camp near *Paris*, yet they went on and came in good time for the aſſiſtance of the King which now reigneth; the juſtice of whoſe quarrel, together with the long continued amity and good intelligence, which her Majeſty had with him, hath moved her Majeſty from time to time to ſupply with great aids; and yet ſhe never by any demand urged upon him the putting into her hands of any town or place: So as upon this that hath been ſaid, let the reader judge whether hath been the more juſt and honourable proceeding; and the more free from ambition and paſſion towards other ſtates; that of *Spain*, or that of *England*? Now, let us examine the proceedings reciprocal between themſelves.

HER Majeſty, at her coming to the crown, found her realm entangled with the wars of *France* and *Scotland* her neareſt neighbours; which wars were grounded only upon the *Spaniards* quarrel; but in the purſuit of them had

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loſt *England* the town of *Calais:* which from the twenty firſt of King *Edward* III. had been poſſeſſed by the Kings of *England.* There was a meeting near *Bourdeaux* towards the end of Queen *Mary*'s reign, between the commiſſioners of *France*, *Spain*, and *England*, and ſome overture of peace was made; but broke off upon the article of the reſtitution of *Calais.* After Queen *Mary*'s death, the King of *Spain* thinking himſelf diſcharged of that difficulty (though in honour he was no leſs bound to it than before) renewed the like treaty, wherein her Majeſty concurred: ſo as the commiſſioners for the ſaid princes met at *Chaſteau Cambraiſſi* near *Cambray.* In the proceedings of which treaty, it is true, that at the firſt the commiſſioners of *Spain*, for form and in demonſtration only, pretended to ſtand firm upon the demand of *Calais:* but it was diſcerned indeed, that the King's meaning was after ſome ceremonies and perfunctory inſiſting thereupon to grow apart to a peace with the *French*, excluding her Majeſty; and ſo to leave her to make her own peace, after her people had made his wars. Which covert dealing being politickly looked into, her Majeſty had reaſon, being newly inveſted in her kingdom, and of her own inclination being affected to peace, to conclude the ſame with ſuch conditions as ſhe might: and yet the King of *Spain* in his diſſimulation had ſo much advantage as ſhe was fain to do it in a treaty apart with the *French*; whereby to one that is not informed of the counſels and treaties of ſtate, as they paſſed, it ſhould ſeem to be a voluntary agreement of her Majeſty, whereto the King of *Spain* would not be party: whereas indeed he left her no other choice; and this was the firſt aſſay or earneſt penny of that King's good affection to her Majeſty.

About the ſame time, when the King was ſolicited to renew ſuch treaties and leagues as had paſſed between the two crowns of *Spain* and *England*, by the Lord *Cobham*, ſent unto him, to acquaint him with the death of Queen *Mary*; and afterwards by Sir *Thomas Chaloner* and Sir *Thomas Chamberlain* ſucceſſively, embaſſadors reſident in his *Low-Countries*; who had orders, divers times, during their charge, to make overtures thereof, both unto the King, and certain principal perſons about him. And laſtly, thoſe former motions taking no effect, by Viſcount *Mountacute* and Sir *Thomas Chamberlain*, ſent into *Spain* in the year 1560; no other anſwer could be had or obtained of the King, but that the treaties did ſtand in as good force to all intents as new ratification could make them. An anſwer ſtrange at that time, but very conformable to his proceedings ſince; which belike even then were cloſely ſmothered in his own breaſt. For had he not at that time ſome hidden alienation of mind, and deſign of an enemy towards her Majeſty, ſo wiſe a King could not be ignorant, that the renewing and ratifying of treaties between princes and ſtates, do add a great life and force, both of aſſurance to the parties themſelves, and countenance and reputation to the world beſides; and have for that cauſe been commonly and neceſſarily uſed and practiſed.

In the meſſage of Viſcount *Mountacute*, it was alſo contained, that he ſhould crave the King's counſel and aſſiſtance, according to amity and good intelligence, upon a diſcovery of certain pernicious plots of the houſe of *Guiſe*, to annoy this realm by the way of *Scotland:* whereunto the King's anſwer was ſo dark and ſo cold, that nothing could be made of it, till he had made an expoſition of it himſelf, by effects in the expreſs reſtraint of munition to be carried out of the *Low-Countries*, unto the ſiege of *Leith*; becauſe our nation was to have ſupply thereof from thence. So as in all the negotiations that paſſed with that King, ſtill her Majeſty received no ſatisfaction, but more and more ſuſpicious and bad tokens of evil affection.

Soon

Soon after, when upon that project, which was diſcloſed before the King had reſolved to diſannul the liberties and privileges unto his ſubjects of the *Netherlands* anciently belonging; and to eſtabliſh amongſt them a martial government, which the people being very wealthy, and inhabiting towns very ſtrong and defenſible, by fortifications both of nature and the hand, could not endure, there followed the defection and revolt of thoſe countries. In which action, being the greateſt of all thoſe which have paſſed between *Spain* and *England*, the proceeding of her Majeſty hath been ſo juſt, and mingled with ſo many honourable regards, as nothing doth ſo much clear and acquit her Majeſty, not only from paſſion, but alſo from all diſhonourable policy. For firſt, at the beginning of the troubles, ſhe did impart unto him faithful and ſincere advice of the courſe that was to be taken for the quieting and appeaſing them; and expreſly forewarned both himſelf and ſuch as were in principal charge in thoſe countries, during the wars, of the danger like to enſue if he held ſo heavy a hand over that people; leſt they ſhould caſt themſelves into the arms of a ſtranger. But finding the King's mind ſo exulcerated as he rejected all counſel that tended to mild and gracious proceeding, her Majeſty nevertheleſs gave not over her honourable reſolution (which was if it were poſſible to reduce and reconcile thoſe countries unto the obedience of their natural ſovereign the King of *Spain*; and if that might not be, yet to preſerve them from alienating themſelves to a foreign lord, as namely unto the *French*, with whom they much treated; and amongſt whom the enterprize of *Flanders* was ever propounded as a mean to unite their own civil diſſenſions) but patiently temporiſing, expected the good effect which time might breed. And whenſoever the ſtates grew into extremities of deſpair, and thereby ready to embrace the offer of any foreigner, then would her Majeſty yield them ſome relief of money, or permit ſome ſupply of forces to go over unto them; to the end, to interrupt ſuch violent reſolution: and ſtill continued to mediate unto the King ſome juſt and honourable capitulations of grace and accord, ſuch as whereby always ſhould have been preſerved unto him ſuch intereſt and authority as he in juſtice could claim, or a prince moderately minded would ſeek to have. And this courſe ſhe held interchangeably, ſeeking to mitigate the wrath of the King, and the deſpair of the countries, till ſuch time as after the death of the Duke of *Anjou*, (into whoſe hands, according to her Majeſty's prediction, but againſt her good liking they had put themſelves:) the enemy preſſing them, the United Provinces were received into her Majeſty's protection: which was after ſuch time, as the King of *Spain* had diſcovered himſelf, not only an implacable lord to them, but alſo a profeſſed enemy unto her Majeſty; having actually invaded *Ireland*, and deſigned the invaſion of *England*. For it is to be noted, that the like offers which were then made unto her Majeſty, had been made to her long before: but as long as her Majeſty conceived any hope, either of making their peace, or entertaining her own with *Spain*, ſhe would never hearken thereunto. And yet now, even at laſt, her Majeſty retained a ſingular and evident proof to the world of her juſtice and moderation, in that ſhe refuſed the inheritance and ſovereignty of thoſe goodly provinces; which by the ſtates, with much inſtance, was preſſed upon her; and being accepted, would have wrought greater contentment and ſatisfaction both to her people and theirs, being countries for the ſite, wealth, commodity of traffick, affection to our nation, obedience of the ſubjects (well uſed) moſt convenient to have been annexed to the crown of *England*, and with all one charge, danger and offence of *Spain*, only took upon her the defence and protection of their liberties: which

which liberties and privileges are of that nature, as they may juſtly eſteem themſelves but conditional ſubjects to the King of *Spain*, more juſtly than *Aragon:* and may make her Majeſty as juſtly eſteem the ancient confederacies and treaties with *Burgundy* to be of force rather with the people and nation, than with the line of the duke; becauſe it was never an abſolute monarchy. So as to ſum up her Majeſty's proceedings in this great action, they have but this, that they have fought firſt to reſtore them to *Spain*, then to keep them from ſtrangers, and never to purchaſe them to her ſelf.

But during all that time, the King of *Spain* kept one tenor in his proceedings towards her Majeſty, breaking forth more and more into injuries and contempts: her ſubjects trading into *Spain* have been many of them burned; ſome caſt into the gallies; others have died in priſon, without any other crimes committed, but upon quarrels pickt upon them for their religion here at home. Her merchants, at the ſack of *Antwerp*, were divers of them ſpoiled and put to their ranſoms, though they could not be charged with any part-taking; neither upon the complaint of Doctor *Wilſon* and Sir *Edward Horſey*, could any redreſs be had. A general arreſt was made by the Duke of *Alva* of *Engliſhmen*'s both goods and perſons; upon pretence, that certain ſhips ſtayed in this realm laden with goods and money of certain merchants of *Genoua* belonged to that King: which money and goods was afterwards, to the uttermoſt value, reſtored and payed back; whereas our men were far from receiving the like juſtice on their ſide. Dr. *Man*, her Majeſty's embaſſador, received, during his legation, ſundry indignities; himſelf being removed out of *Madrid*, and lodged in a village, as they are accuſtomed to uſe the embaſſadors of *Moors:* his ſon and ſteward forced to aſſiſt at a maſs with tapers in their hands; beſides ſundry other contumelies and reproaches. But the ſpoiling or damnifying of a merchant, vexation of a common ſubject, diſhonour of an embaſſador, were rather but demonſtrations of ill diſpoſition than effects, if they be compared with actions of ſtates; wherein he and his miniſters have fought the overthrow of this government. As in the year 1569, when the rebellion in the north part of *England* brake forth; who but the Duke of *Alva*, (then the King's lieutenant in the *Low-Countries)* and *Don Guerres* of *Eſpes*, then his embaſſador lieger here, were diſcovered to be chief inſtruments and practiſers, having complotted with the Duke of *Norfolk* at the ſame time, as was proved at the ſame duke's condemnation, that an army of twenty thouſand men ſhould have landed at *Harwich*, in aid of that part, which the ſaid duke had made within the realm, and the ſaid duke having ſpent and employed one hundred and fifty thouſand crowns in that preparation.

Not contented thus to have conſorted and aſſiſted her Majeſty's rebels in *England*, he procured a rebellion in *Ireland*; arming and ſending thither in the year 1579 an arch-rebel of that country, *James-Fitz-Morice*, which before was fled. And truly to ſpeak, the whole courſe of moleſtation, which her Majeſty hath received in that realm by the riſing and keeping on of the *Iriſh*, hath been nouriſhed and fomented from *Spain*; but afterwards moſt apparently in the year 1580 he invaded the ſame *Ireland* with *Spaniſh* forces, under an *Italian* colonel, by name *San Joſepho*, being but the fore-runners of a greater power; which by treaty between him and the pope ſhould have followed; but that by the ſpeedy defeat of thoſe former, they were diſcouraged to purſue the action: which invaſion was proved to be done by the King's own orders, both by the letters of ſecretary *Eſcovedo*, and of *Guerres* to the King; and alſo by divers other letters, wherein the particular conferences

were ſet down concerning this enterpriſe between cardinal *Riario* the pope's legate, and the King's deputy in *Spain* touching the general, the number of men, the contribution of money, and the manner of the proſecuting of the action, and by the confeſſion of ſome of the chiefeſt of thoſe that were taken priſoners at the fort; which act being an act of apparent hoſtility, added unto all the injuries aforeſaid, and accompanied with a continual receit, comfort, and countenance, by audiences, penſions, and employments, which he gave to traytors and fugitives, both *Engliſh* and *Iriſh*; as *Weſtmoreland*, *Paget*, *Engleſield*, *Baltinglaſs*, and numbers of others; did ſufficiently juſtify and warrant that purſuit of revenge, which (either in the ſpoil of *Carthagena* and *San Domingo* in the *Indies*, by Mr. *Drake*, or in the undertaking the protection of the *Low-Countries* when the earl of *Leiceſter* was ſent over) afterwards followed. For before that time her Majeſty, though ſhe ſtood upon her guard in reſpect of the juſt cauſe of jealouſy, which the ſundry injuries of that King gave her; yet had entred into no offenſive action againſt him. For both the voluntary forces which Don *Antonio* had collected in this realm, were by expreſs commandment reſtrained, and offer was made of reſtitution to the *Spaniſh* embaſſador of ſuch treaſure as had been brought into this realm, upon proof that it had been taken by wrong; and the duke of *Anjou* was (as much as could ſtand with the near treaty of a marriage which then was very forward between her Majeſty and the ſaid duke) diverted from the enterpriſe of *Flanders*.

But to conclude this point, when that ſome years after the invaſion and conqueſt of this land, intended long before, but through many croſſes and impediments, which the King of *Spain* found in his plots deferred, was in the year 1588 attempted; her Majeſty, not forgetting her own nature, was content at the ſame inſtant to treat of a peace; not ignorantly, as a prince that knew not in what forwardneſs his preparations were, (for ſhe had diſcovered them long before;) nor fearfully, as may appear by the articles whereupon her Majeſty in that treaty ſtood, which were not the demands of a prince afraid; but only to ſpare the ſhedding of Chriſtian blood, and to ſhew her conſtant deſire to make her reign renown'd, rather by peace than victories: which peace was on her part treated ſincerely, but on his part (as it ſhould ſeem) was but an abuſe; thinking thereby to have taken us more unprovided: ſo that the duke of *Parma*, not liking to be uſed as an inſtrument in ſuch a caſe, in regard of his particular honour, would ſometimes in treating interlace, that the King his maſter meant to make his peace with his ſword in his hand. Let it then be tryed upon an indifferent view of the proceedings of *England* and *Spain*, who it is that fiſheth in troubled waters, and hath diſturbed the peace of Chriſtendom, and hath written and deſcribed all his plots in blood.

There follow the articles of an univerſal peace, which the libeller, as a commiſſioner for the eſtate of *England*, hath propounded, and are theſe:

First, that the King of *Spain* ſhould recall ſuch forces, as, of great compaſſion to the natural people of *France*, he hath ſent thither to defend them againſt a relapſed Huguenot.

Secondly, that he ſuffer his rebels of *Holland* and *Zealand* quietly to poſſeſs the places they hold, and to take unto them all the reſt of the *Low-Countries* alſo; conditionally, that the *Engliſh* may ſtill keep the poſſeſſion of ſuch port towns as they have, and have ſome half a dozen more annexed unto them.

Thirdly,

THIRDLY, that the *Engliſh* rovers might peaceably go to his *Indies*, and there take away his treaſure and his *Indies* alſo.

AND theſe articles being accorded, (he ſaith) might follow that peace which paſſeth all underſtanding, as he calleth it in a ſcurrile and prophane mockery of the peace which Chriſtians enjoy with God, by the atonement which is made by the blood of Chriſt, whereof the Apoſtle ſaith, *that it paſſeth all underſtanding*. But theſe his articles are ſure miſtaken, and indeed corrected are briefly theſe:

1. THAT the King of *France* be not impeached in reducing his rebels to obedience.

2. THAT the *Netherlands* be ſuffered to enjoy their ancient liberties and privileges, and ſo forces of ſtrangers to be withdrawn, both *Engliſh* and *Spaniſh*.

3. THAT all nations may trade into the *Eaſt* and *Weſt-Indies*; yea, diſcover and occupy ſuch parts as the *Spaniard* doth not actually poſſeſs, and are not under civil government, notwithſtanding any donation of the pope.

5. OF the cunning of the libeller, in palliation of his malicious invectives againſt her Majeſty and the ſtate, with pretence of taxing only the actions of the lord *Burleigh*.

I CANNOT rightly call this point cunning in the libeller, but rather good-will to be cunning; without ſkill indeed or judgment: for finding that it had been the uſual and ready practice of ſeditious ſubjects to plant and bend their invectives and clamours; not againſt the ſovereigns themſelves, but againſt ſome ſuch as had grace with them, and authority under them, he put in ure his learning in a wrong and unproper caſe. For this hath ſome appearance to cover undutiful invectives, when it is uſed againſt favourites or new upſtarts, and ſudden riſen counſellors: but when it ſhall be practiſed againſt one that hath been counſellor before her Majeſty's time, and hath continued longer counſellor than any other counſellor in *Europe*; one that muſt needs have been great if it were but by ſurviving alone, though he had no other excellency; one that hath paſſed the degrees of honour with great travel and long time, which quencheth always envy, except it be joined with extreme malice; then it appeareth manifeſtly to be but a brick-wall at tennis to make the defamation and hatred rebound from the counſellor upon the prince. And aſſuredly they be very ſimple to think to abuſe the world with thoſe ſhifts; ſince every child can tell the fable, that the wolf's malice was not to the ſhepherd, but to his dog. It is true, that theſe men have altered their tune twice or thrice: when the match was in treating with the duke of *Anjou*, they ſpake honey as to her Majeſty; all the gall uttered was againſt the earl of *Leiceſter*: But when they had gotten heart upon the expectation of the invaſion, they changed ſtyle, and diſcloſed all the venom in the world immediately againſt her Majeſty: what new hope hath made them return to their *Sinon*'s note, in teaching *Troy* how to ſave itſelf, I cannot tell. But in the mean time they do his lordſhip much honour: for the more deſpitefully they inveigh againſt his lordſhip, the more reaſon hath her Majeſty to truſt him, and the realm to honour him. It was wont to be a token of ſcarce a good liegeman when the enemy ſpoiled the country, and left any particular men's houſes or fields unwaſted.

6. CERTAIN

6. CERTAIN true general notes upon the actions of the Lord *Burleigh*.

BUT above all the reſt, it is a ſtrange fancy in the libeller that he maketh his lordſhip to be the *primum mobile* in every action without diſtinction; and to him her Majeſty is accountant of her reſolutions; that to him the Earl of *Leiceſter* and Mr. Secretary *Walſingham*, both men of great power, and of great wit and underſtanding, were but as inſtruments: whereas it is well known, that as to her Majeſty there was never a counſellor of his lordſhip's long continuance that was ſo appliable to her Majeſty's princely reſolutions; endeavouring always after faithful propoſitions and remonſtrances; and theſe in the beſt words, and the moſt grateful manner, to reſt upon ſuch concluſions, as her Majeſty in her own wiſdom determineth, and them to execute to the beſt: So far hath he been from conteſtation, or drawing her Majeſty into any his own courſes. And as for the forenamed counſellors and others, with whom his lordſhip hath conſorted in her Majeſty's ſervice, it is rather true, that his lordſhip out of the greatneſs of his experience and wiſdom; and out of the coldneſs of his nature, hath qualified generally all hard and extreme courſes, as far as the ſervice of her Majeſty, and the ſafety of the ſtate, and the making himſelf compatible with thoſe with whom he ſerved would permit: So far hath his lordſhip been from inciting others, or running a full courſe with them in that kind. But yet, it is more ſtrange that this man ſhould be ſo abſurdly malicious, as he ſhould charge his lordſhip, not only with all actions of ſtate, but alſo with all the faults and vices of the times; as if curioſity and emulation have bred ſome controverſies in the church; though (thanks be to God) they extended but to outward things; as if wealth, and the cunning of wits have brought forth multitudes of ſuits in law; as if exceſs in pleaſures, and in magnificence joined with the unfaithfulneſs of ſervants, and the greedineſs of monied men, have decayed the patrimony of many noblemen, and others. That all theſe, and ſuch like conditions of the time ſhould be put on his lordſhip's account; who hath been, as far as to his place appertaineth, a moſt religious and wiſe moderator in church-matters to have unity kept; who with great juſtice hath diſpatched infinite cauſes in law that have orderly been brought before him: and for his own example, may ſay that which few men can ſay; but was ſometimes ſaid by *Cephalus*, the *Athenian* ſo much renowned in *Plato*'s works; who having lived near to the age of an hundred years, and in continual affairs and buſineſs, was wont to ſay of himſelf; that he never ſued any, neither had been ſued by any: who by reaſon of his office hath preſerved many great houſes from overthrow, by relieving ſundry extremities towards ſuch as in their minority have been circumvented; and towards all ſuch as his lordſhip might adviſe, did ever perſuade ſober and limited expence. Nay, to make proof farther of his contented manner of life, free from ſuits and covetouſneſs, as he never ſued any man, ſo did he never raiſe any rent, or put out any tenant of his own; nor ever gave conſent to have the like done to any of the Queen's tenants; matters ſingularly to be noted in this age.

BUT however, by this fellow, as in a falſe artificial glaſs, which is able to make the beſt face deformed, his lordſhip's doings be ſet forth; yet let his proceedings (which be indeed his own) be indifferently weighed and conſidered; and let men call to mind, that his lordſhip was never a violent and tranſported man in matters of ſtate, but ever reſpective and moderate; that he was never man in his particular a breaker of necks; no heavy enemy, but

ever

ever placable and mild; that he was never a brewer of holy water in court; no dallier, no abuſer, but ever real and certain; that he was never a bearing man, nor carrier of cauſes, but ever gave way to juſtice and courſe of law; that he was never a glorious wilful proud man, but ever civil and familiar, and good to deal withal; that in the courſe of his ſervice, he hath rather ſuſtained the burthen, than ſought the fruition of honour or profit; ſcarcely ſparing any time from his cares and travels to the ſuſtentation of his health; that he never had, nor ſought to have for himſelf and his children any penny-worth of lands or goods that appertained to any attainted of any treaſon, felony, or otherwiſe; that he never had, or ſought any kind of benefit by any forfeiture to her Majeſty; that he was never a factious commender of men, as he that intended any ways to beſiege her, by bringing in men at his devotion; but was ever a true reporter unto her Majeſty of every man's deſerts and abilities; that he never took the courſe to unquiet and offend, no nor exaſperate her Majeſty, but to content her mind, and mitigate her diſpleaſure; that he ever bare himſelf reverently and without ſcandal in matters of religion, and without blemiſh in his private courſe of life. Let men, I ſay, without paſſionate malice, call to mind theſe things; and they will think it reaſon, that though he be not canonized for a ſaint in *Rome*, yet he is worthily celebrated as *Pater Patriae* in *England*; and though he be libelled againſt by fugitives, yet he is prayed for by a multitude of good ſubjects; and laſtly, though he be envied whilſt he liveth, yet he ſhall be deeply wanted when he is gone. And aſſuredly many princes have had many ſervants of truſt, name, and ſufficiency: but where there have been great parts, there hath often wanted temper of affection; where there have been both ability and moderation, there have wanted diligence and love of travail; where all three have been, there have ſometimes wanted faith and ſincerity; where ſome few have had all theſe four, yet they have wanted time and experience: but where there is a concurrence of all theſe, there is no marvel, though a prince of judgment be conſtant in the employment and truſt of ſuch a ſervant.

7. Of divers particular untruths and abuſes diſperſed through the libel.

The order which this man keepeth in his libel, is ſuch, as it may appear, that he meant but to empty ſome note-book of matters of *England*, to bring in (whatſoever came of it) a number of idle jeſts, which he thought might fly abroad; and intended nothing leſs than to clear the matters he handled by the light of order and diſtinct writing. Having therefore in the principal points, namely, the ſecond, third, and fourth articles, ranged his ſcattering and wandering diſcourſe into ſome order, ſuch as may help the judgment of the reader, I am now content to gather up ſome of his by-matters and ſtraggling untruths, and very briefly to cenſure them.

Pag. 9. he ſaith, that his lordſhip cõuld neither by the greatneſs of his beads, creeping to the croſs, nor exterior ſhew of devotion before the high altar, find his entrance into high dignity in Queen *Mary*'s time. All which is a mere fiction at pleaſure; for Queen *Mary* bare that reſpect unto him in regard of his conſtant ſtanding for her title, that ſhe deſired to continue his ſervice; the refuſal thereof growing from his own part: he enjoyed nevertheleſs all other liberties and favours of the time; ſave only that it was put into the Queen's head that it was dangerous to permit him to go beyond the ſea, becauſe he had a great wit of action, and had ſerved in ſo principal

a place; which nevertheleſs after, with Cardinal *Pool*, he was ſuffered to do.

PAG. *eadem* he ſaith, Sir *Nicolas Bacon*, that was lord keeper, was a man of exceeding crafty wit; which ſheweth that this fellow in his ſlanders is no good marks-man, but throweth out his words of defaming without all level. For all the world noted Sir *Nicolas Bacon* to be a man plain, direct, and conſtant, without all fineſſe and doubleneſs; and one that was of the mind that a man in his private proceedings and eſtate, and in the proceedings of ſtate, ſhould reſt upon the ſoundneſs and ſtrength of his own courſes, and not upon practice to circumvent others, according to the ſentence of *Solomon*; *vir prudens advertit ad greſſus ſuos, ſtultus autem divertit ad dolos:* inſomuch that the biſhop of *Roſs*, a ſubtle and obſerving man, ſaid of him, that he could faſten no words upon him, and that it was impoſſible to come within him, becauſe he offered no play: and the Queen-mother of *France*, a very politick princeſs, ſaid of him, that he ſhould have been of the council of *Spain*, becauſe he deſpiſed the occurrents, and reſted upon the firſt plot; ſo that if he were crafty, it is hard to ſay who is wiſe.

PAG. 10. he ſaith, that the Lord *Burleigh*, in the eſtabliſhment of religion, in the beginning of the Queen's time, preſcribed a compoſition of his own invention; whereas the ſame form not fully ſix years before, had been received in this realm in King *Edward*'s time: ſo as his lordſhip being a Chriſtian politick counſellor, thought it better to follow a precedent, than to innovate; and choſe the precedent rather at home than abroad.

PAG. 41. he ſaith, that catholicks never attempted to murder any principal perſon of her Majeſty's court, as did *Burchew*, (whom he calleth a puritan) in wounding of a gentleman inſtead of Sir *Chriſtopher Hatton*; but by their great virtue, modeſty, and patience, do manifeſt in themſelves a far different ſpirit from the other ſort. For *Burchew* it is certain he was mad; as appeareth not only by his mad miſtaking, but by the violence that he offered afterwards to his keeper, and moſt evidently by his behaviour at his execution: but of catholicks (I mean the traitorous ſort of them) a man may ſay as *Cato* ſaid ſometimes of *Caeſar*, *eum ad evertendam rempublicam ſobrium acceſſiſſe:* they came ſober and well adviſed to their treaſons and conſpiracies; and commonly they look not ſo low as the counſellors, but have bent their murderous attempts immediately againſt her Majeſty's ſacred perſon, (which God have in his precious cuſtody:) as may appear by the conſpiracy of *Sommerville*, *Parry*, *Savage*, the ſix, and others; nay, they have defended it *in theſi*, to be a lawful act.

PAG. 43. he ſaith, that his lordſhip, whom he calleth the arch-politick, hath fraudulently provided, that when any prieſt is arraigned, the indictment is enforced with many odious matters: wherein he ſheweth great ignorance if it be not malice; for the law permitteth not the ancient forms of indictments to be altered; like as in an action of treſpaſs, although a man take away another's goods in the peaceableſt manner in the world, yet the writ hath *quare vi & armis*; and if a man enter upon another's ground and do no more, the plaintif mentioneth *quod herbam ſuam ibidem creſcentem, cum equis, bobus, porcis, & bidentibus, depaſtus ſit, conculcavit & conſumpſit.* Neither is this any abſurdity, for in the practice of all law the formularies have been few and certain; and not varied according to every particular caſe. And in indictments alſo of treaſon, it is not ſo far fetched as in that of treſpaſs; for the law ever preſumeth in treaſon an intention of ſubverting the ſtate, and impeaching the Majeſty royal.

PAG.

PAG. 45. and in other places, ſpeaking of the perſecuting of the catholicks, he ſtill mentioneth bowellings and conſuming mens entrails by fire; as if this were a torture newly deviſed: wherein he doth cautelouſly and maliciouſly ſuppreſs, that the law and cuſtom of this land from all antiquity hath ordained that puniſhment in caſe of treaſon, and permitteth no other. And a puniſhment ſurely it is, though of great terror, yet by reaſon of the quick diſpatching, of leſs torment far than either the wheel or forcipation, yea than ſimple burning.

PAG. 48. he ſaith, *England* is confederate with the great *Turk:* wherein if he mean it becauſe the merchants have an agent in *Conſtantinople*, how will he anſwer for all the Kings of *France* ſince *Francis* the firſt, which were good catholicks? For the Emperor? For the King of *Spain* himſelf? For the ſenate of *Venice*, and other ſtates, that have had long time embaſſadors liegers in that court? If he mean it becauſe the *Turk* hath done ſome ſpecial honour to our embaſſador, (if he be ſo to be termed) we are beholden to the King of *Spain* for that; for that the honour we have won upon him by oppoſition, hath given us reputation through the world: if he meant it becauſe the *Turk* ſeemeth to affect us for the aboliſhing of images; let him conſider then what a ſcandal the matter of images hath been in the church; as having been one of the principal branches whereby Mahometiſm entered.

PAG. 65. he ſaith, Cardinal *Allen* was of late very near to have been elected pope. Whereby he would put the catholicks here in ſome hope, that once within five or ſix years (for a pope commonly ſitteth no longer) he may obtain that which he miſſed narrowly. This is a direct abuſe, for it is certain in all the conclaves ſince *Sixtus Quintus* who gave him his hat, he was never in poſſibility; nay, the King of *Spain* that hath patronized the church of *Rome* ſo long, as he is become a right patron of it, in that he ſeeketh to preſent to that ſee whom he liketh, yet never durſt ſtrain his credit to ſo deſperate a point as once to make a canvaſs for him: no, he never nominated him in his incluſive narration. And thoſe that know any thing of the reſpects of conclaves, know that he is not papable: firſt, becauſe he is an *ultramontane*, of which ſort there hath been none theſe fifty years. Next, becauſe he is a cardinal of alms of *Spain*, and wholly at the devotion of that King. Thirdly, becauſe he is like to employ the treaſures and favours of the popedom upon the enterprizes of *England*, and the relief and advancement of *Engliſh* fugitives, his neceſſitous country-men; ſo as he preſumed much upon the ſimplicity of the reader in this point, as in many more.

PAG. 55. and again p. 70. he ſaith, his lordſhip (meaning the Lord *Burleigh)* intendeth to match his grandchild Mr. *William Cecil* with the Lady *Arabella*. Which being a mere imagination, without any circumſtance at all to induce it, more than that they are both unmarried, and that their years agree well, needeth no anſwer. It is true that his lordſhip being no ſtoical unnatural man, but loving towards his children; for *charitas reipublicae incipit a familia*; hath been glad to match them into honourable and good blood: and yet not ſo, but that a private gentleman of *Northamptonſhire* that lived altogether in the country, was able to beſtow his daughters higher than his lordſhip hath done. But yet it is not ſeen by any thing paſt, that his lordſhip ever thought or affected to match his children in the blood royal. His lordſhip's wiſdom, which hath been ſo long of gathering, teaching him to leave to his poſterity rather ſurety than danger. And I marvel where be the combinations which have been with great men; and the popular and plauſible courſes, which ever accompany ſuch deſigns, as the libeller ſpeaketh of:

and

and therefore this match is but like unto that which the ſame fellow concluded between the ſame Lady *Arabella* and the Earl of *Leiceſter*'s ſon, when he was but a twelvemonth old.

PAG. 70. he ſaith, he laboureth inceſſantly with the Queen to make his eldeſt ſon deputy of *Ireland:* as if that were ſuch a catch, conſidering all the deputies ſince her Majeſty's time (except the Earl of *Suſſex* and the Lord *Grey*) have been perſons of meaner degree than Sir *Thomas Cecil* is; and the moſt that is gotten by that place, is but the ſaving and putting up of a man's own revenues, during thoſe years that he ſerveth there; and this perhaps to be ſaved with ſome diſpleaſure at his return.

PAG. *eadem* he ſaith, he hath brought in his ſecond ſon Sir *Robert Cecil* to be of the council, who hath neither wit nor experience; which ſpeech is as notorious an untruth as is in all the libel: for it is confeſſed by all men that know the gentleman, that he hath one of the rareſt and moſt excellent wits of *England*, with a ſingular delivery and application of the ſame; whether it be to uſe a continued ſpeech, or to negotiate or to touch in writing, or to make report, or diſcreetly to conſider of the circumſtances, and aptly to draw things to a point; and all this joined with a very good nature and great reſpect to all men, as is daily more and more revealed. And for his experience, it is eaſy to think that his training and helps hath made it already ſuch as many that have ſerved long prentiſhood for it, have not attained the like: ſo as if that be true, *qui beneficium digno dat, omnes obligat*; not his father only, but the ſtate is bound unto her Majeſty, for the choice and employment of ſo ſufficient and worthy a gentleman.

THERE be many other follies and abſurdities in the book; which if an eloquent ſcholar had it in hand he would take advantage thereof, and juſtly make the author not only odious, but ridiculous and contemptible to the world: But I paſs them over, and even this which hath been ſaid hath been vouchſafed to the value and worth of the matter, and not the worth of the writer, who hath handled a theme above his compaſs.

8. OF the height of impudence that theſe men are grown unto in publiſhing and avouching untruths, with a particular recital of ſome of them for an aſſay.

THESE men are grown to a ſingular ſpirit and faculty in lying and abuſing the world; ſuch as it ſeemeth although they are to purchaſe a particular diſpenſation for all other ſins, yet they have a diſpenſation dormant to lye for the catholick cauſe, which moveth me to give the reader a taſte of their untruths, ſuch as are written, and are not merely groſs and palpable; deſiring him out of their own writings, when any ſhall fall into his hands, to encreaſe the roll at leaſt in his own memory.

WE retain in our calendars no other holidays but ſuch as have their memorials in the ſcriptures: and therefore in the honour of the bleſſed Virgin, we only receive the feaſts of the annunciation and the purification; omitting the other of the conception and the nativity; which nativity was uſed to be celebrated upon the eighth of *September*, the vigil whereof happen'd to be the nativity of our Queen; which though we keep not holy, yet we uſe therein certain civil cuſtoms of joy and gratulation, as ringing of bells, bonfires, and ſuch like; and likewiſe make a memorial of the ſame day in our calendar: whereupon they have publiſhed, that we have expunged the nativity of the bleſſed Virgin, and put inſtead thereof the nativity of our Queen

Queen: And farther, that we ſing certain hymns unto her, uſed to be ſung unto our lady.

It happened that upon ſome blood-ſhed in the church of *Paul's*, according to the canon law, yet with us in force, the ſaid church was interdicted, and ſo the gates ſhut up for ſome few days; whereupon they publiſhed, that becauſe the ſame church is a place where people uſe to meet to walk and confer, the Queen's Majeſty, after the manner of the ancient tyrants, had forbidden all aſſemblies and meetings of people together; and for that reaſon, upon extreme jealouſy, did cauſe *Paul's* gates to be ſhut up.

The gate of *London* called *Ludgate*, being in decay, was pulled down and built a-new; and on the one ſide was ſet up the image of King *Lud* and his two ſons; who, according to the name, was thought to be the firſt founder of that gate; and on the other ſide, the image of her Majeſty, in whoſe time it was re-edified: whereupon they publiſhed that her Majeſty, after all the images of the ſaints were long beaten down, had now at laſt ſet up her own image upon the principal gate of *London* to be adored, and that all men were forced to do reverence to it as they paſſed by, and a watch there placed for that purpoſe.

Mr. *Jewel* the Biſhop of *Saliſbury*, who according to his life died moſt godly and patiently, at the point of death uſed the verſicle of the hymn *Te Deum, O Lord in thee have I truſted, let me never be confounded*; whereupon ſuppreſſing the reſt, they publiſhed, that the principal champion of the hereticks in his very laſt words cried he was confounded.

In the act of recognition of *primo*, whereby the right of the crown is acknowledged by parliament to be in her Majeſty, (the like whereof was uſed in Queen *Mary*'s time) the words of limitation are, in the Queen's Majeſty, and the natural heirs of her body, and her lawful ſucceſſors. Upon which word (natural) they do maliciouſly, and indeed villainouſly gloſs, that it was the intention of the parliament, in a cloud to convey the crown to any iſſue of her Majeſty's that were illegitimate; whereas the word (heir) doth with us ſo neceſſarily and pregnantly import lawfulneſs, as it had been *indecorum*, and uncivil ſpeaking of the iſſues of a prince to have expreſſed it.

They ſet forth in the year a book with tables and pictures of the perſecutions againſt catholicks, wherein they have not only ſtories of fifty years old to ſupply their pages, but alſo taken all the perſecutions of the primitive church, under the heathen, and tranſlated them to the practice of *England*; as that of worrying prieſts under the ſkins of bears, by dogs, and the like.

I conclude then, that I know not what to make of this exceſs in avouching untruths, ſave this, that they may truly chaunt in their quires; *linguam noſtram magnificabimus, labia noſtra nobis ſunt:* And that they who have long ago forſaken the truth of God, which is the touchſtone, muſt now hold by the whetſtone; and that their ancient pillar of lying wonders being decayed, they muſt now hold by lying ſlanders, and make their libels ſucceſſors to their legend.

A TRUE

REPORT

Of the deteſtable

TREASON,

INTENDED

By Doctor *RODERIGO LOPEZ*,

A Phyſician attending upon the Perſon of the

QUEEN's MAJESTY,

Whom he, for a ſum of money promiſed to be paid him by the King of *Spain*, did undertake to have deſtroyed by poiſon; with certain Circumſtances both of the plotting and detecting the ſaid Treaſon: Penned during the Queen's Life.

THE King of *Spain* having found by the enterprize of 88, the difficulty of an invaſion of *England*; and having alſo ſince that time embraced the matters of *France* (being a deſign of a more eaſy nature, and better prepared to his hand) hath of neceſſity for a time layed aſide the proſecution of his attempts againſt this realm by open forces, as knowing his means unable to wield both actions at once, as well that of *England* as that of *France:* And therefore, caſting at the faireſt, hath (in a manner) bent his whole ſtrength upon *France*, making, in the mean time, only a defenſive war upon the *Low-Countries*. But finding again, that the ſupports and aids which her Majeſty hath continued to the *French* King, are a principal impediment and retardation to his prevailing there according to his ends, he hath now of late, by all means, projected to trouble the waters here, and to cut us out ſome work at home; that by practice, without diverting and employing any great forces, he might nevertheleſs divert our ſuccours from *France*.

ACCORDING to which purpoſe, he firſt proved to move ſome innovation in *Scotland*, not ſo much in hope to alienate the King from the amity of her Majeſty, as practiſing to make a party there againſt the King himſelf, whereby he ſhould be compelled to uſe her Majeſty's forces for his aſſiſtance. Then he ſolicited a ſubject within this realm (being a perſon of great nobility) to riſe in arms and levy war againſt her Majeſty; which practice was by the ſame nobleman loyally and prudently revealed. And laſtly, (rather, as it is to be thought, by the inſtigation of our traitorous fugitives in foreign parts, and the corrupter ſort of his counſellors and miniſters, than of his own nature

ture and inclination) either of himſelf, or his ſaid counſellors and miniſters uſing his name, have deſcended to a courſe againſt all honour, all ſociety and humanity, odious to God and man, deteſted by the heathens themſelves, which is to take away the life of her Majeſty (which God have in his precious cuſtody) by violence or poiſon. A matter which might be proved to be not only againſt all Chriſtianity and religion, but againſt nature, the law of nations, the honour of arms, the civil law, the rules of morality and policy; finally, to be the moſt condemned, barbarous, and ferine act that can be imagined; yea, (ſuppoſing the quarrels and hoſtility between the princes to be never ſo declared and ſo mortal) yet were it not that it would be a very reproach unto the age, that the matter ſhould be once diſputed or called in queſtion, it could never be defended. And therefore I leave it to the cenſure which *Titus Livius* giveth in the like caſe upon *Perſeus* the laſt King of the *Macedons*, afterwards overthrown, taken with his children, and led in triumph by the *Romans*: *Quem non juſtum bellum gerere regio animo, ſed per omnia clandeſtina graſſari ſcelera, latrociniorum ac veneficiorum, cernebant.*

But to proceed, certain it is, that even about this preſent time there have been ſuborned and ſent into this realm divers perſons, ſome *Engliſh*, ſome *Iriſh*, corrupted by money and promiſes, and reſolved and conjured by prieſts in confeſſion, to have executed that moſt wretched and horrible fact; of which number certain have been taken, and ſome have ſuffered, and ſome are ſpared becauſe they have with great ſorrow confeſſed theſe attempts, and deteſted their ſuborners. And if I ſhould conjecture what the reaſon is why this curſed enterprize was at this time ſo hotly and with ſuch diligence purſued, I take it to be chiefly becauſe the matters of *France* were ripe, and the King of *Spain* made himſelf ready to unmaſk himſelf, and to reap that in *France*, which he had been long in ſowing, in regard that there being like to be a divulſion in the league by the reconciliation of ſome of the heads to the King, the more paſſionate ſort being deſtituted by their aſſociates, were like to caſt themſelves wholly into the King of *Spain*'s arms, and to diſmember ſome important piece of that crown, though now upon this freſh accident of receiving the King into *Paris*, it is to be thought that both the worſt affected of the league will ſubmit themſelves upon any tolerable conditions to their natural King thus advanced in ſtrength and reputation; and the King of *Spain* will take a ſecond advice ere he embark himſelf too far in any new attempt againſt *France*. But taking the affairs as they then ſtood before this accident unexpected; eſpecially of the council of *Spain*, during this his ſuppoſed harveſt in *France*, his council had reaſon to wiſh that there were no diſturbance from hence, where they make account that if her Majeſty were removed (upon whoſe perſon God continue his extraordinary watch and providence) here would be nothing but confuſion, which they do not doubt but with ſome no great treaſure, and forces from without, may be nouriſhed till they can more fully intend the ruin of this ſtate according to their ancient malice.

But howſoever that be, amongſt the number of theſe execrable undertakers, there was none ſo much built and relied upon by the great ones of the other ſide, as was this phyſician *Lopez*; nor (indeed) none ſo dangerous; whether you conſider the aptneſs of the inſtrument, or the ſubtlety and ſecrecy of thoſe that practiſed with him, or the ſhift and evaſion which he had provided for a colour of his doings, if they ſhould happen to come into queſtion. For firſt, whereas others were to find and encounter infinite difficulties, in the very obtaining of an opportunity to execute this horrible act;

and

and beſides, cannot but ſee preſent and moſt aſſured death before their eyes, and therefore muſt be (as it were) damnable votaries if they undertake it: this man, in regard of his faculty, and of his private acceſs to her Majeſty, had both means to perpetrate, and means to conceal, whereby he might reap the fruit of his wicked treaſon without evident peril. And for his complices that practiſed with him, being *Portugueſe*, and of the retinue of King *Antonio*, the King of *Spain*'s mortal enemy, they were men thereby freed and diſcharged from ſuſpicion, and might ſend letters and receive letters out of *Spain* without jealouſy; as thoſe which were thought to entertain intelligences there for the good of their maſter. And for the evaſion and maſk that *Lopez* had prepared for this treaſon, if it had not been ſearched and ſifted to the bottom, it was, that he did intend but to cozen the King of *Spain*, without ill meaning; ſomewhat in the nature of that ſtratagem which *Parry*, a moſt cunning and artificial traitor, had provided for himſelf.

NEVERTHELESS this matter, by the great goodneſs of God, falling into good hands, of thoſe honourable and ſufficient perſons which dealt therein, was by their great and worthy induſtry ſo handled and followed, as this *Proteus* of a diſguiſed and transformed treaſon, did at laſt appear in his own likeneſs and colours, which were as foul and monſtrous as have been known in the world. For ſome of her Majeſty's council long ſince entered into conſideration that the retinue of King *Antonio* (I mean ſome of them) were not unlike to hatch theſe kinds of treaſons, in regard they were needy ſtrangers, entered into deſpair of their maſter's fortune, and like enough to aſpire to make their peace at home by ſome ſuch wicked ſervices as theſe; and therefore grew to have an extraordinary vigilant eye upon them: which prudent and diſcreet preſumption, or conjecture, joined with ſome advertiſements of eſpials abroad, and ſome other induſtry, was the firſt cauſe (next under the great benediction of God, which giveth unto princes zealous counſellors, and giveth to counſellors policy, and diſcerning thoughts) of the revealing and diſcovering of theſe treaſons, which were contrived in order and form, as hereafter is ſet down.

THIS *Lopez*, of nation a *Portugueſe*, and ſuſpected to be in ſect ſecretly a *Jew*, (though here he conformed himſelf to the rites of the Chriſtian religion) for a long time profeſſed phyſick in this land, by occaſion whereof (being withal a man very obſervant and officious, and of a pleaſing and appliable behaviour; in that regard, rather than for any great learning in his faculty) he grew known and favoured in court, and was ſome years ſince ſworn phyſician of her Majeſty's houſhold; and by her Majeſty's bounty, of whom he had received divers gifts of good commodity, was grown to good eſtate of wealth.

THIS man had inſinuated himſelf greatly (in regard he was of the ſame nation) with the King *Antonio*, whoſe cauſes he pretended to ſolicite at the court; eſpecially while he ſuppoſed there was any appearance of his fortune; of whom alſo he had obtained (as one that reſerved all his doings to gain) an aſſignation of 50000 crowns to be levied in *Portugal*. But being a perſon wholly of a corrupt and mercenary nature, and finding his hopes cold from that part; he caſt his eyes upon a more able paymaſter, and ſecretly made offer long ſince of his ſervice to the King of *Spain*; and accordingly gave ſundry intelligences of that which paſſed here, and imported moſt for the King of *Spain* to know, having no ſmall means, in regard of his continual attendance at court, nearneſs, and acceſs, to learn many particulars of great weight: Which intelligences he maintained with *Bernardine Mendoza*, *Antonio Vega*, *Roderigo Marquez*, and divers others.

IN

In the conveyance of which his intelligences, and in the making known of his diſpoſition to do the King of *Spain* ſervice, he had (amongſt others) one *Manuel Andrada* a *Portugueſe*, revolted from *Don Antonio* to the King of *Spain*; one that was diſcovered to have practiſed the death of the ſaid *Don Antonio*, and to have betrayed him to *Bernardine Mendoza*. This man coming hither, was, for the ſame, his practice appearing by letters intercepted, apprehended and committed to priſon. Before which time alſo, there had been by good diligence intercepted other letters, whereby the ſaid *Andrada* advertiſed *Mendoza*, that he had won Dr. *Lopez* to the King's ſervice: but *Lopez* having underſtanding thereof, and finding means to have ſecret conference with *Andrada* before his examination, perſuaded with him to take the matter upon himſelf, as if he had invented that advertiſement touching *Lopez*, only to procure himſelf credit with *Mendoza*; and to make him conceive well of his induſtry and ſervice. And to move him hereunto, *Lopez* ſet before *Andrada*, that if he did excuſe him, he ſhould have credit to work his delivery; whereas, if he did impeach him, he was not like to find any other means of favour. By which ſubtle perſuaſion *Andrada*, when he came to be examined, anſwered according to the direction and leſſoning which *Lopez* had given him. And having thus acquitted himſelf of this ſuſpicion, became a ſuitor for *Andrada*'s delivery, craftily ſuggeſting, that he was to do ſome notable ſervice to *Don Antonio*; in which his ſuit he accordingly prevailed. When *Lopez* had thus got *Andrada* out of priſon, he was ſuffered to go out of the realm into *Spain*; in pretence (as was ſaid) to do ſome ſervice to *Don Antonio*; but in truth, to continue *Lopez*'s negotiation and intelligences with the King of *Spain*; which he handled ſo well, as at his return hither, for the comforting of the ſaid *Lopez*, he brought to him from the King, beſides thanks and words of encouragement, and an *Abrazo* (which is the complement of favour) a very good jewel garniſhed with ſundry ſtones of good value. This jewel, when *Lopez* had accepted, he cunningly caſt with himſelf, that if he ſhould offer it to her Majeſty firſt, he was aſſured ſhe would not take it: next, that thereby he ſhould lay her aſleep, and make her ſecure of him for greater matters, according to the ſaying, *fraus ſibi fidem in parvis praeſtruit ut in magnis opprimat*; which accordingly he did, with proteſtations of his fidelity: and her Majeſty, as a princeſs of magnanimity, nor apt to fear or ſuſpicion, returned it to him with gracious words.

After *Lopez* had thus abuſed her Majeſty, and had theſe trials of the fidelity of *Andrada*; they fell in conference (the matter being firſt moved by *Andrada*, as he that came freſhly out of *Spain*) touching the empoiſoning of the Queen: Which *Lopez* (who ſaw that matter of intelligence without ſome ſuch particular ſervice, would draw no great reward from the King of *Spain*; ſuch as a man that was not needy, but wealthy as he was, could find any taſte in) aſſented unto. And to that purpoſe procured again this *Andrada* to be ſent over, as well to advertiſe and aſſure this matter to the King of *Spain* and his miniſters (namely to the Count *de Fuentes*, aſſiſtant to the general of the King of *Spain*'s forces in the *Low Countries*,) as alſo to capitulate and contract with him about the certainty of his reward. *Andrada* having received thoſe inſtructions, and being furniſhed with money by *Lopez*'s procurement from *Don Antonio*, about whoſe ſervice his employment was believed to be, went over to *Calais*, where he remained, to be near unto *England* and *Flanders*, having a boy that ordinarily paſſed to and fro between him and *Lopez*: by whom he did alſo (the better to colour his em-

ployment) write to *Lopez* intelligence, as it was agreed he ſhould between him and *Lopez*; who bad him ſend ſuch news as he ſhould take up in the ſtreets. From *Calais* he writeth to Count *de Fuentes* of *Lopez*'s promiſe and demands. Upon the receipt of which letters, after ſome time taken to advertiſe this propoſition into *Spain*, and to receive direction thereupon, the Count *de Fuentes* aſſociated with *Stephano Ibarra*, ſecretary of the council of the wars in the *Low-Countries*, calleth to him one *Manuel Louis Tinoco*, a *Portugueſe*, who had alſo followed King *Antonio*, and of whoſe good devotion he had had experience, in that he had conveyed unto him two ſeveral pacquets, wherewith he was truſted by the King *Antonio* for *France*. Of this *Louis* they firſt received a corporal oath, with ſolemn ceremony, taking his hands between their hands, that he ſhould keep ſecret that which ſhould be imparted to him, and never reveal the ſame, though he ſhould be apprehended and queſtioned here. This done, they acquaint him with the letters of *Andrada*, with whom they charge him to confer at *Calais* in his way, and to paſs to *Lopez* into *England*, addreſſing him farther to *Stephano Ferrera de Gama*, and ſignifying unto the ſaid *Lopez* withal (as from the King) that he gave no great credence to *Andrada*, as a perſon too ſlight to be uſed in a cauſe of ſo great weight: and therefore marvelled much that he heard nothing from *Ferrera* of this matter, from whom he had in former time been advertiſed in generality of *Lopez*'s good affection to do him ſervice. This *Ferrera* had been ſometimes a man of great livelihood and wealth in *Portugal*, which he did forego in adhering to *Don Antonio*, and appeareth to be a man of capacity and practice; but hath ſome years ſince been ſecretly won to the ſervice of the King of *Spain*, not travelling nevertheleſs to and fro, but reſiding as his lieger in *England*.

MANUEL Louis diſpatched with theſe inſtructions, and with all affectionate commendations from the count to *Lopez*, and with letters to *Ferrera*, took his journey firſt to *Calais*, where he conferred with *Andrada*; of whom receiving more ample information, together with a ſhort ticket of credence to *Lopez*, that he was a perſon whom he might truſt without ſcruple, came over into *England*, and firſt repaired to *Ferrera*, and acquainted him with the ſtate of the buſineſs, who had before that time given ſome light unto *Lopez*, that he was not a ſtranger unto the practice between him and *Andrada*, wherewith (indeed) *Andrada* had (in a ſort) acquainted him. And now upon this new diſpatch and knowledge given to *Lopez*, of the choice of *Ferrera* to continue that which *Andrada* had begun; he, to conform himſelf the better to the ſatisfaction of the King of *Spain*, and his miniſters abroad, was content more fully to communicate with *Ferrera*, with whom, from that time forward, he meant ſingly and apertly to deal; and therefore cunningly forbore to ſpeak with *Manuel Louis* himſelf; but concluded, that *Ferrera* ſhould be his only trunk, and all his dealings ſhould paſs through his hands, thinking thereby to have gone inviſible.

WHEREUPON he caſt with himſelf, that it was not ſafe to uſe the mediation of *Manuel Louis*, who had been made privy to the matter as ſome baſe carrier of letters; which letters alſo ſhould be written in a cipher, not of alphabet, but of words; ſuch as might, if they were opened, import no vehement ſuſpicion. And therefore *Manuel Louis* was ſent back with a ſhort anſwer, and *Lopez* purveyed himſelf of a baſe fellow, a *Portugueſe* called *Gomez d'Avila*, dwelling hard by *Lopez*'s houſe, to convey his letters. After this meſſenger provided, it was agreed between *Lopez* and *Ferrera*, that letters ſhould be ſent to the Count *de Fuentes* and Secretary *Juarra*, written and ſigned by

by *Ferrera*, (for *Lopez* cautelouſly did forbear to write himſelf) but directed and (indeed) dictated word by word by *Lopez* himſelf. The contents thereof were, that *Lopez* was ready to execute that ſervice to the King, which before had been treated, but required for his recompence the ſum of 50000 crowns, and aſſurance for the ſame.

These letters were written obſcurely (as was touched) in terms of merchandize; to which obſcurity, when *Ferrera* excepted, *Lopez* anſwered, they knew his meaning by that which had paſſed before. *Ferrera* wrote alſo to *Manuel Louis*, but charged this *Gomez* to deliver the ſame letters unto him in the preſence of *Juarra*; as alſo the letter to *Juarra* in the preſence of *Manuel Louis*. And theſe letters were delivered to *Gomez d'Avila* to be carried to *Bruſſels*, and a paſſport procured, and his charges defrayed by *Lopez*. And *Ferrera*, the more to approve his induſtry, writ letters two ſeveral times, the one conveyed by *Emanuel Pallacios*, with the privity of *Lopez*, to *Chriſtophero Moro*, a principal counſellor of the King of *Spain*, in *Spain*; ſignifying that *Lopez* was won to the King of *Spain*, and that he was ready to receive his commandment; and received a letter from the ſame *Chriſtophero Moro*, in anſwer to one of theſe, which he ſhewed unto *Lopez*. In the mean time *Lopez*, though a man (in ſemblance) of a heavy wit, yet indeed ſubtle of himſelf, as one trained in practice; and beſides, as wily as fear and covetouſneſs could make him, thought to provide for himſelf (as was partly touched before) as many ſtarting holes and evaſions as he could deviſe, if any of theſe matters ſhould come to light. And firſt he took his time to caſt forth ſome general words afar off to her Majeſty, as aſking her the queſtion, whether a deceiver might not be deceived? Whereof her Majeſty (not imagining theſe words tended to ſuch end as to warrant him colourably in this wretched conſpiracy, but otherwiſe of her own natural diſpoſition bent to integrity and ſincerity,) uttered diſlike and diſallowance. Next, he thought he had wrought a great myſtery in demanding the preciſe ſum of 50000 crowns, agreeing juſt with the ſum of aſſignation or donation from *Don Antonio*; idly, and in that groſly imagining, that if afterwards he ſhould accept the ſame ſum, he might excuſe it, as made good by the King of *Spain*, in regard he deſiſted to follow and favour *Don Antonio*: whereupon the King of *Spain* was in honour tied not to ſee him a loſer. Thirdly, in his conferences with *Ferrera*, when he was oppoſed upon the particular manner how he would poiſon her Majeſty, he purpoſely named unto him a ſyrup, knowing that her Majeſty never uſed ſyrup; and therefore thinking that would prove an high point for his juſtification, if things ſhould come in any queſtion.

But all this while deſirous after his prey which he had in hope devoured, he did inſtantly importune *Ferrera* for the anſwering of his laſt diſpatch, finding the delay ſtrange, and reiterating the proteſtations of his readineſs to do the ſervice, if he were aſſured of his money.

Now before the return of *Gomez d'Avila* into *England*, this *Stephen Ferrera* was diſcovered to have intelligence with the enemy; but ſo, as the particular of his traffick and overtures appeared not: only it ſeemed there was great account made of that he managed, and thereupon he was committed to priſon. Soon after arrived *Gomez d'Avila*, and brought letters only from *Manuel Louis*, by the name of *Franciſco de Thores*; becauſe (as it ſeemeth) the great perſons on the other ſide had a contrary diſpoſition to *Lopez*, and liked not to write by ſo baſe a meſſenger, but continued their courſe to truſt and employ *Manuel Louis* himſelf, who in likelihood was retained till they might receive a full concluſion from *Spain*; which was not till about two months

months after. This *Gomez* was apprehended at his landing, and about him were found the letters aforesaid written in jargon, or verbal cipher, but yet somewhat suspicious, in these words: This bearer will tell you the price in which your pearls are esteemed, and in what resolution we rest about a little musk and amber, which I am determined to buy. Which words the said *Manuel Louis* afterwards voluntarily confessed to be deciphered in this sort; That by the allowance of the pearls, he meant, that the Count *de Fuentes*, and the Secretary, did gladly accept the offer of *Lopez* to poison the Queen, signified by *Ferrera*'s letter; and for the provision of amber and musk, it was meant, that the Count looked shortly for a resolution from the King of *Spain*, concerning a matter of importance, which was for burning of the Queen's ships; and another point, tending to the satisfaction of their vindictive humour.

But while the sense of this former letter rested ambiguous, and that no direct particular was confessed by *Ferrera*, nor sufficient light given to ground any rigorous examination of him, cometh over *Manuel Louis* with the resolution from *Spain*; who first understanding of *Ferrera*'s restraint, and therefore doubting how far things were discovered, to shadow the matter, like a cunning companion, gave advertisement of an intent he had to do service, and hereupon obtained a passport: but after his coming in, he made no haste to reveal any thing, but thought to dally and abuse in some other sort. And while the light was thus in the clouds, there was also intercepted a little ticket which *Ferrera* in prison had found means to write, in care to conceal *Lopez*, and to keep him out of danger, to give a caveat of staying all farther answers and advertisements in these causes. Whereupon *Lopez* was first called in question.

But in conclusion, this matter being with all assiduity and policy more and more pierced and mined into; first, there was won from *Manuel Louis* his letters from the Count *de Fuentes* and secretary *Juarra* to *Ferrera*, in both which mention is made of the Queen's death; in that of the count's, under the term of a commission; and in that of the secretary's, under the term of the great service, whereof should arise an universal benefit to the whole world. Also the letters of credit written by *Gonzalo Gomez*, one to *Pedro de Carrera*, and the other to *Juan Pallacio*, to take up a sum of money by *Manuel Louis*, by the foresaid false name of *Fr. de Thores*; letters so large, and in a manner without limitation, as any sum by virtue thereof might be taken up: which letters were delivered to *Louis* by the Count *de Fuentes*'s own hands, with directions to shew them to *Lopez* for his assurance; a matter of God's secret working in staying the same, for thereupon rested only the execution of the fact of *Lopez*. Upon so narrow a point consisted the safety of her Majesty's life, already sold by avarice to malice and ambition, but extraordinarily preserved by that watchman which never slumbereth. This same *Manuel Louis*, and *Stephen Ferrera* also, whereof the one managed the matter abroad, and the other resided here to give correspondence, never meeting after *Manuel* had returned, severally examined without torture or threatening, did in the end voluntarily and clearly confess the matters above-mentioned, and in their confessions fully consent and concur, not only in substance, but in all points, particularities, and circumstances; which confessions appear expressed in their own natural language, testified and subscribed with their own hands, and in open assembly, at the arraignment of *Lopez* in the *Guildhall*, were by them confirmed and avouched to *Lopez* his face; and therewithal are extant undefaced, the original letters from Count *de Fuentes*, Secretary *Juarra*, and the rest.

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AND *Lopez* himſelf at his firſt apprehenſion and examination did indeed deny, and deny with deep and terrible oaths and execrations, the very conferences and treaties with *Ferrera*, or *Andrada*, about the empoiſonment. And being demanded if they were proved againſt him what he would ſay? he anſwered, That he would yield himſelf guilty of the fact intended. Nevertheleſs, being afterwards confronted by *Ferrera*, who conſtantly maintained to him all that he ſaid, reducing him to the times and places of the ſaid conferences, he confeſſed the matter, as by his confeſſion in writing ſigned with his own hand appeareth. But then he fell to that ſlender evaſion, as his laſt refuge, that he meant only to cozen the King of *Spain* of the money, and in that he continued at his arraignment; when notwithſtanding, at the firſt, he did retract his own confeſſion: and yet being aſked, whether he was drawn either by means of torture, or promiſe of life to make the ſame confeſſion? he did openly teſtify that no ſuch means were uſed towards him.

BUT the falſhood of this excuſe being an allegation that any traytor may uſe and provide for himſelf, is convicted by three notable proofs. The firſt, that he never opened this matter, neither unto her Majeſty, unto whom he had ordinary acceſs, nor to any counſellor of ſtate, to have permiſſion to toll on, and inveigle theſe parties with whom he did treat, if it had been thought ſo convenient; wherein, percaſe, he had opportunity to have done ſome good ſervice, for the farther diſcovery of their ſecret machinations againſt her Majeſty's life. The ſecond, that he came too late to this ſhift; having firſt bewrayed his guilty conſcience, in denying thoſe treaties and conferences till they were evidently and manifeſtly proved to his face. The third, that in conferring with *Ferrera* about the manner of his aſſurance, he thought it better to have the money in the hands of ſuch merchants as he ſhould name in *Antwerp*, than to have brought it into *England*; declaring his purpoſe to be, after the fact done, ſpeedily to fly to *Antwerp*, and there to tarry ſome time, and ſo to convey himſelf to *Conſtantinople*; where it is affirmed, that *Don Salomon*, a *Jew* in good credit, is *Lopez* his near kinſman, and that he is greatly favoured by the ſaid *Don Salomon*: whereby it is evident that *Lopez* had caſt his reckonings upon the ſuppoſition of the fact done.

THUS may appear, both how juſtly this *Lopez* is condemned for the higheſt treaſon that can be imagined; and how, by God's marvellous goodneſs, her Majeſty hath been preſerved. And ſurely if a man do truly conſider, it is hard to ſay, whether God hath done greater things by her Majeſty or for her: if you obſerve on the other ſide, how God hath ordained her government to break and croſs the unjuſt ambition of the two mighty potentates, the King of *Spain* and the Biſhop of *Rome*, never ſo ſtraitly between themſelves combined: and on the other ſide, how mightily God hath protected her, both againſt foreign invaſion and inward troubles, and ſingularly againſt the many ſecret conſpiracies that have been made againſt her life; thereby declaring to the world that he will indeed preſerve that inſtrument which he hath magnified. But the corruptions of theſe times are wonderful, when that wars, which are the higheſt trials of right between princes (that acknowledge no ſuperior juriſdiction) and ought to be proſecuted with all honour, ſhall be ſtained and infamed with ſuch foul and inhuman practices. Wherein if ſo great a King hath been named, the rule of the civil law (which is a rule of common reaſon) muſt be remembered; *fruſtra legis auxilium implorat, qui in legem committit.* He that hath ſought to violate Majeſty royal, in the higheſt degree, cannot claim the preheminence thereof to be exempted from juſt imputation.

A

DECLARATION

OF THE

PRACTICES and TREASONS attempted and committed by ROBERT late Earl of *Essex* and his Complices, against her Majesty and her Kingdoms; and of the Proceedings as well at the Arraignments and Convictions of the said Earl, and his Adherents, as after: Together with the very Confessions, and other Parts of the Evidences themselves, word for word, taken out of the Originals. Imprinted *Anno* 1601 *.

THOUGH publick justice passed upon capital offenders, according to the laws, and in course of an honourable and ordinary trial (where the case would have born and required the severity of martial law to have been speedily used) do in itself carry a sufficient satisfaction towards all men, specially in a merciful government, such as her Majesty's is approved to be: yet because there do pass abroad in the hands of many men divers false and corrupt collections and relations of the proceedings at the arraignment of the late earls of *Essex* and *Southampton*; and again, because it is requisite that the world do understand as well the precedent practices and inducements to the treasons, as the open and actual treasons themselves; (though in a case of life it was not thought convenient to insist at the trial upon matter of inference or presumption, but chiefly upon matter of plain and direct proofs;) therefore it hath been thought fit to publish to the world a brief declaration of the practices and treasons attempted and committed by *Robert* late earl of *Essex* and his complices against her Majesty and her kingdoms, and of the proceedings at the convictions of the said late earl and his adherents upon the same treasons: and not so only, but therewithal, for the better warranting and verifying of the narration, to set down in the end the very confessions and testimonies themselves word for word, taken out of the originals, whereby it will be most manifest that nothing is obscured or disguised, though it do appear by divers most wicked and seditious libels thrown abroad, that the dregs of

* *Our Author has abundantly vouched this* DECLARATION, *&c. to be penned by himself in the following passage of his Apology:*

IT is very true also, about that time, her Majesty taking a liking of my pen, upon that which I had formerly done concerning the proceeding at *York-House*, and likewise upon some other DECLARATIONS, which in former times by her appointment I put in writing, commanded me to pen that book, which was published for the better satisfaction of the world; which I did, but so, as never secretary had more particular and express directions and instructions in every point how to guide my hand in it: and not only so, but after that I had made a first draught thereof, and propounded it to certain principal counsellors by her Majesty's appointment, it was perused, weighed, censured, altered, and made almost a new writing, according to their Lordships better consideration; wherein their lordships and my self both were as religious and curious of truth, as desirous of satisfaction: and my self indeed gave only words and form of style in pursuing their direction. And after it had passed their allowance, it was again exactly perused by the Queen herself, and some alterations made again by her appointment: nay, and after it was set to print, the Queen, who, as your lordship knoweth, as she was excellent in great matters, so she was exquisite in small; and noted that I could not forget my ancient respect to my lord of *Essex*, in terming him ever, my lord of *Essex*, my lord of *Essex*, almost in every page of the book; which she thought not fit, but would have it made *Essex*, or the late Earl of *Essex*; whereupon, of force, it was printed *de novo*, and the first copies suppressed by her peremptory commandment.

of theſe treaſons which the late earl of *Eſſex* himſelf, a little before his death, did term a leproſy, that had infected far and near, do yet remain in the hearts and tongues of ſome miſaffected perſons.

THE moſt partial will not deny, but that *Robert* late earl of *Eſſex* was, by her Majeſty's manifold benefits and graces, beſides oath and allegiance, as much tied to her Majeſty, as the ſubject could be to the Sovereign; her Majeſty having heaped upon him both dignities, offices, and gifts, in ſuch meaſure, as within the circle of twelve years or more, there was ſcarcely a year of reſt, in which he did not obtain at her Majeſty's hands ſome notable addition either of honour or profit.

BUT he on the other ſide making theſe her Majeſty's favours nothing elſe but wings for his ambition, and looking upon them not as her benefits, but as his advantages, ſuppoſing that to be his own metal which was but her mark and impreſſion, was ſo given over by God (who often puniſheth ingratitude by ambition, and ambition by treaſon, and treaſon by final ruin) as he had long ago plotted it in his heart to become a dangerous ſupplanter of that ſeat, whereof he ought to have been a principal ſupporter; in ſuch ſort as now every man of common ſenſe may diſcern not only his laſt actual and open treaſons, but alſo his former more ſecret practices and preparations towards thoſe his treaſons, and that without any gloſs or interpreter, but himſelf and his own doings.

FOR firſt of all, the world can now expound why it was that he did aſpire, and had almoſt attained unto a greatneſs, like unto the ancient greatneſs of the *præfectus prætorio* under the Emperors of *Rome*, to have all men of war to make their ſole and particular dependence upon him; that with ſuch jealouſy and watchfulneſs he ſought to diſcountenance any one that might be a competitor to him in any part of that greatneſs: that with great violence and bitterneſs he ſought to ſuppreſs and keep down all the worthieſt martial men, which did not appropriate their reſpects and acknowledgments only towards himſelf. All which did manifeſtly detect and diſtinguiſh, that it was not the reputation of a famous leader in the wars which he ſought (as it was conſtrued a great while,) but only power and greatneſs to ſerve his own ends, conſidering he never loved virtue nor valour in another, but where he thought he ſhould be proprietary and commander of it, as referred to himſelf.

So likewiſe thoſe points of popularity which every man took notice and note of, as his affable geſtures, open doors, making his table and his bed ſo popularly places of audience to ſuitors, denying nothing when he did nothing, feeding many men in their diſcontentments againſt the Queen and the ſtate, and the like; as they were ever ſince *Abſalom*'s time the forerunners of treaſons following, ſo in him were they either the qualities of a nature diſpoſed to diſloyalty, or the beginnings and conceptions of that which afterwards grew to ſhape and form.

BUT as it were a vain thing to think to ſearch the roots and firſt motions of treaſons, which are known to none but God that diſcerns the heart, and the devil that gives the inſtigation; ſo it is more than to be preſumed (being made apparent by the evidence of all the events following) that he carried into *Ireland* a heart corrupted in his allegiance, and pregnant of thoſe or the like treaſons which afterwards came to light.

FOR being a man by nature of an high imagination, and a great promiſer to himſelf as well as to others, he was confident that if he were once the firſt perſon in a kingdom, and a ſea between the Queen's ſeat and his, and *Wales* the

the neareſt land from *Ireland*, and that he had got the flower of the *Engliſh* forces into his hands (which he thought ſo to intermix with his own followers, as the whole body ſhould move by his ſpirit;) and if he might have alſo abſolutely into his own hands *poteſtatem vitae & necis, & arbitriam belli & pacis*, over the rebels of *Ireland*, whereby he might entice and make them his own, firſt by pardons and conditions, and after by hopes to bring them in place where they ſhould ſerve for hope of better booties than cows, he ſhould be able to make that place of lieutenancy of *Ireland*, as a riſe or ſtep to aſcend to his deſired greatneſs in *England*.

And although many of theſe conceits were windy, yet neither were they the leſs like to his, neither are they now only probable conjectures or comments upon theſe his laſt treaſons, but the very preludes of actions almoſt immediately ſubſequent, as ſhall be touched in due place.

But firſt, it was ſtrange with what appetite and thirſt he did affect and compaſs the government of *Ireland*, which he did obtain. For although he made ſome formal ſhews to put it from him; yet in this, as in moſt things elſe, his deſires being too ſtrong for his diſſimulations, he did ſo far paſs the bounds of decorum, as he did in effect name himſelf to the Queen by ſuch deſcription and ſuch particularities as could not be applied to any other but himſelf; neither did he ſo only, but farther he was ſtill at hand to offer and urge vehemently and peremptorily exceptions to any other that was named.

Then after he once found that there was no man but himſelf (who had other matters in his head) ſo far in love with that charge, as to make any competition or oppoſition to his purſuit, whereby he ſaw it would fall upon him, and eſpecially after himſelf was reſolved upon; he began to make propoſitions to her Majeſty by way of taxation of the former courſe held in managing the actions of *Ireland*, eſpecially upon three points; the firſt, that the proportions of forces which had been there maintained and continued by ſupplies, were not ſufficient to bring the proſecutions there to period. The ſecond, that the axe had not been put to the root of the tree, in regard there had not been made a main proſecution upon the arch-traitor *Tyrone* in his own ſtrength, within the province of *Ulſter*. The third, that the proſecutions before time had been intermixed and interrupted with too many temporizing treaties, whereby the rebel did ever gather ſtrength and reputation to renew the war with advantage. All which goodly and well-ſounding diſcourſes, together with the great vaunts, that he would make the earth tremble before him, tended but to this, that the Queen ſhould encreaſe the liſt of her army, and all proportions of treaſure and other furniture, to the end, his commandment might be the greater. For that he never intended any ſuch proſecution, may appear by this, that even at the time before his going into *Ireland*, he did open himſelf ſo far in ſpeech to *Blount*, his inwardeſt counſellor, That he did aſſure himſelf that many of the rebels in *Ireland* would be adviſed by him: ſo far was he from intending any proſecution towards thoſe in whom he took himſelf to have intereſt. But his ends were two; the one to get great forces into his hands; the other, to oblige the heads of the rebellion unto him, and to make them of his party. Theſe two ends had in themſelves a repugnancy; for the one imported proſecution, and the other treaty: but he that meant to be too ſtrong to be called to account for any thing, and meant beſides, when he was once in *Ireland*, to engage himſelf in other journeys that ſhould hinder the proſecution in the *North*, took things in order as they made for him; and ſo firſt did nothing as was ſaid, but trumpet a final and utter proſecution againſt *Tyrone* in the *North*, to the end to have his forces augmented.

The confeſſion of *Blount*. 3.

But

BUT yet he forgat not his other purpoſe of making himſelf ſtrong by a party amongſt the rebels, when it came to the ſcanning of the clauſes of his commiſſion. For then he did inſiſt, and that with a kind of conteſtation, that the pardoning, no not of *Tyrone* himſelf, the capital rebel, ſhould be excepted and reſerved to her Majeſty's immediate grace; being infinitely deſirous that *Tyrone* ſhould not look beyond him for his life or pardon, but ſhould hold his fortune as of him, and account for it to him only.

So again, whereas in the commiſſion of the Earl of *Suſſex*, and of all other lieutenants or deputies, there was ever in that clauſe which giveth unto the lieutenant or deputy, that high or regal point of authority to pardon treaſons and traitors, an exception contained of ſuch caſes of treaſon as are committed againſt the perſon of the King: it was ſtrange, and ſuſpiciouſly ſtrange even at that time, with what importunity and inſtance he did labour, and in the end prevailed to have that exception alſo omitted, gloſſing then, that becauſe he had heard that by ſtrict expoſition of law (a point in law that he would needs forget at his arraignment, but could take knowledge of it before, when it was to ſerve his own ambition) all treaſons of rebellion did tend to the deſtruction of the King's perſon, it might breed a buz in the rebels heads, and ſo diſcourage them from coming in; whereas he knew well that in all experience paſſed, there was never rebel made any doubt or ſcruple upon that point to accept of pardon from all former governors, who had their commiſſions penned with that limitation, (their commiſſions being things not kept ſecretly in a box, but publiſhed and recorded:) ſo as it appeared manifeſtly that it was a mere device of his own out of the ſecret reaches of his heart then not revealed; but it may be ſhrewdly expounded ſince, what his drift was by thoſe pardons which he granted to *Blunt* the marſhal, and *Thomas Lee*, and others, that his care was no leſs to ſecure his own inſtruments than the rebels of *Ireland*.

YET was there another point for which he did contend and conteſt, which was, that he might not be tied to any opinion of the counſel of *Ireland*, as all others in certain points (as pardoning traitors, concluding war and peace, and ſome other principal articles) had been before him; to the end he might be abſolute of himſelf, and be fully maſter of opportunities and occaſions for the performing and executing of his own treaſonable ends.

BUT after he had once by her Majeſty's ſingular truſt and favour toward him obtained his patent of commiſſion as large, and his liſt of forces as full as he deſired, there was an end in his courſe of the proſecution in the *North*. For being arrived into *Ireland*, the whole carriage of his actions there was nothing elſe but a cunning defeating of that journey, with an intent (as appeared) in the end of the year to pleaſure and gratify the rebel with a diſhonourable peace, and to contract with him for his own greatneſs.

THEREFORE not long after he had received the ſword, he did voluntarily ingage himſelf in an unſeaſonable and fruitleſs journey into *Munſter*, a journey never propounded in the counſel there, never advertiſed over hither while it was paſt: by which journey her Majeſty's forces which were to be preſerved intire both in vigor and number for the great proſecution, were haraſſed and tired with long marches together, and the *Northern* proſecution was indeed quite daſhed and made impoſſible.

BUT yet ſtill doubting he might receive from her Majeſty ſome quick and expreſs commandment to proceed: to be ſure he purſued his former device of wrapping himſelf in other actions, and ſo ſet himſelf on work anew in the county of *Ophaley*, being reſolved, as is manifeſt, to dally out the ſeaſon, and never to have gone that journey at all: that ſetting forward which he made

in the very end of *Auguſt* being but a mere play and a mockery, and for the purpoſes which now ſhall be declared.

AFTER he perceived that four months of the ſummer, and three parts of the army were waſted, he thought now was a time to ſet on foot ſuch a peace as might be for the rebels advantage, and ſo to work a mutual obligation between *Tyrone* and himſelf; for which purpoſe he did but ſeek a commodity. He had there with him in his army one *Thomas Lee*, a man of a ſeditious and working ſpirit, and one that had been privately familiar and intirely beloved of *Tyrone*, and one that afterwards immediately upon *Eſſex* open rebellion, was apprehended for a deſperate attempt of violence againſt her Majeſty's perſon; which he plainly confeſſed, and for which he ſuffered. Wherefore judging him to be a fit inſtrument, he made ſome ſignification to *Lee* of ſuch an employment, which was no ſooner ſignified than apprehended by *Lee*. He gave order alſo to Sir *Chriſtopher Blunt*, marſhal of his army, to licenſe *Lee* to go to *Tyrone*, when he ſhould require it. But *Lee* thought good to let ſlip firſt unto *Tyrone* (which was nevertheleſs by the marſhal's warrant) one *James Knowd*, a perſon of wit and ſufficiency, to ſound in what terms and humours *Tyrone* then was. This *Knowd* returned a meſſage from *Tyrone* to *Lee*, which was, That if the Earl of *Eſſex* would follow *Tyrone*'s plot, he would make the Earl of *Eſſex* the greateſt man that ever was in *England*: and farther, that if the Earl would have conference with him, *Tyrone* would deliver his eldeſt ſon in pledge for his aſſurance. This meſſage was delivered by *Knowd* to *Lee*, and by *Lee* was imparted to the Earl of *Eſſex*, who after this meſſage employed *Lee* himſelf to *Tyrone*, and by his negociating (whatſoever paſſed elſe) prepared and diſpoſed *Tyrone* to the parley.

The confeſſion of *Tho. Lee.*

AND this employment of *Lee* was a matter of that guiltineſs in my Lord, as being charged with it at my Lord Keeper's only in this nature, (for the meſſage of *Knowd* was not then known;) that when he pretended to aſſail *Tyrone*, he had before underhand agreed upon a parley, my Lord utterly denied it that he ever employed *Lee* to *Tyrone* at all, and turned it upon *Blunt* whom he afterwards required to take it upon him, having before ſufficiently provided for the ſecurity of all parts, for he had granted both to *Blunt* and *Lee* pardons of all treaſons under the great ſeal of *Ireland*, and ſo himſelf diſclaiming it, and they being pardoned, all was ſafe.

In the confeſſion of *Blunt* at the bar, he did there declare that he had *Eſſex* his particular warrant to ſend *Lee*, and afterwards was deſired by *Eſſex* to take it upon himſelf, and that they both had pardons.

BUT when that *Tyrone* was by theſe means (beſides what others, God knows) prepared to demand a parley, now was the time for *Eſſex* to acquit himſelf of all the Queen's commandments, and his own promiſes and undertakings for the *Northern* journey; and not ſo alone, but to have the glory at the diſadvantage of the year, being but 2500 ſtrong of foot, and 300 of horſe, after the freſh diſaſter of Sir *Conyers Clifford*, in the height of the rebels pride, to ſet forth to aſſail, and then that the very terror and reputation of my Lord of *Eſſex* perſon was ſuch, as did daunt him and make him ſtoop to ſeek a parley; and this was the end he ſhot at in that *September* journey, being a mere abuſe and bravery, and but inducements only to the treaty, which was the only matter he intended. For *Eſſex* drawing now towards the cataſtrophe, or laſt part of that tragedy, for which he came upon the ſtage in *Ireland*, his treaſons grew to a farther ripeneſs. For knowing how unfit it was for him to communicate with any *Engliſh*, even of thoſe whom he truſted moſt, and meant to uſe in other treaſons; that he had an intention to grow to an agreement with *Tyrone*, to have ſuccours from him for the uſurping upon the ſtate here, (not becauſe it was more dangerous than the reſt of his treaſons, but becauſe it was more odious, and in a kind monſtrous, that

he

he ſhould conſpire with ſuch a rebel, againſt whom he was ſent; and therefore might adventure to alienate mens affections from him;) he drave it to this, that there might be, and ſo there was, under colour of treaty, an interview and private conference between *Tyrone* and himſelf only, no third perſon admitted. A ſtrange courſe, conſidering with whom he dealt, and eſpecially conſidering what meſſage *Knowd* had brought, which ſhould have made him rather call witneſſes to him, than avoid witneſſes. But he being only true to his own ends, eaſily diſpenſed with all ſuch conſiderations. Nay, there was ſuch careful order taken, that no perſon ſhould overhear one word that paſſed between them two; as becauſe the place appointed and uſed for the parley was ſuch, as there was the depth of a brook between them, which made them ſpeak with ſome loudneſs; there were certain horſemen appointed by order from *Eſſex*, to keep all men off a great diſtance from the place.

It is true, that the ſecrecy of that parley, as it gave to him the more liberty of treaſon, ſo it may give any man the more liberty of ſurmiſe, what was then handled between them, inaſmuch as nothing can be known, but by report from one of them two, either *Eſſex* or *Tyrone*.

But although there were no proceeding againſt *Eſſex* upon theſe treaſons, and that it were a needleſs thing to load more treaſons upon him then, whoſe burden was ſo great after: yet for truth's ſake, it is fit the world know what is teſtified touching the ſpeeches, letters, and reports of *Tyrone*, immediately following this conference, and obſerve alſo what enſued likewiſe in the deſigns of *Eſſex* himſelf.

On *Tyrone*'s part it fell out, that the very day after that *Eſſex* came to the court of *England*, *Tyrone* having conference with Sir *William Warren* at *Armagh*, by way of diſcourſe told him, and bound it with an oath, and iterated it two or three ſeveral times; That within two or three months he ſhould ſee the greateſt alterations and ſtrangeſt that ever he ſaw in his life, or could imagine: and that he the ſaid *Tyrone* hoped ere long to have a good ſhare in *England*. With this concurred fully the report of *Richard Bremingham*, a gentleman of the pale, having made his repair about the ſame time to *Tyrone*, to right him in a cauſe of land; ſaving that *Bremingham* delivers the like ſpeech of *Tyrone* to himſelf; but not what *Tyrone* hoped, but what *Tyrone* had promiſed in theſe words, That he had promiſed (it may be thought to whom) ere long to ſhew his face in *England*, little to the good of *England*.

The relation of Sir *Will. Warren* certified under his hand, from the council of *Ireland* to the Lords of the council here.

The report of *Ri. Bremingham* to the council of eſtate in *Ireland*.

These generalities coming immediately from the report of *Tyrone* himſelf, are drawn to more particularity in a conference had between the Lord *Fitz-Morrice* Baron of *Likſnaw* in *Munſter*, and one *Thomas Wood*, a perſon well reputed of, immediately after *Eſſex* coming into *England*. In which conference *Fitz-Morrice* declared unto *Wood*, that *Tyrone* had written to the traitorous titulary Earl of *Deſmond* to inform him, that the condition of that contract between *Tyrone* and *Eſſex* was, That *Eſſex* ſhould be King of *England*; and that *Tyrone* ſhould hold of him the honour and ſtate of Viceroy of *Ireland*; and that the proportion of ſoldiers which *Tyrone* ſhould bring or ſend to *Eſſex*, were 8000 *Iriſh*. With which concurreth fully the teſtimony of the ſaid *James Knowd*, who being in credit with *Owny Mac Roory*, chief of the *Omoores* in *Lemſter*, was uſed as a ſecretary for him, in the writing of a letter to *Tyrone*, immediately after *Eſſex* coming into *England*. The effect of which letter was, To underſtand ſome light of the ſecret agreement between the Earl of *Eſſex* and *Tyrone*, that he the ſaid *Owny* might frame his courſe accordingly. Which letter, with farther inſtructions to the ſame effect, was in the preſence of *Knowd* delivered to *Turlagh Macdauy*, a man

The confeſſion of *Tho. Wood*.

The confeſſion of *James Knowd*.

of

of truſt with *Owny*, who brought an anſwer from *Tyrone*: the contents whereof were, That the Earl of *Eſſex* had agreed to take his part, and that they ſhould aid him towards the conqueſt of *England*.

BESIDES, very certain it is, and teſtified by divers credible perſons, that immediately upon this parley there did fly abroad, as ſparkles of this fire, (which it did not concern *Tyrone* ſo much to keep ſecret, as it did *Eſſex*) a general and received opinion, that went up and down in the mouths both of the better and meaner ſort of rebels; That the Earl of *Eſſex* was theirs, and they his; and that he would never leave the one ſword, meaning that of *Ireland*, till he had gotten the other in *England*; and that he would bring them to ſerve, where they ſhould have other manner of booties than cows; and the like ſpeeches. And *Thomas Lee* himſelf (who had been, as was before declared, with *Tyrone* two or three days, upon my Lord's ſending, and had ſounded him) hath left it confeſſed under his hand; That he knew the Earl of *Eſſex* and *Tyrone* to be one, and to run the ſame courſes.

The Declarations of *Da. Hetherington*, *Ja. Knowd*, and others.

The confeſſion of *Tho. Lee*.

AND certain it is alſo, that immediately upon the parley, *Tyrone* grew into a ſtrange and unwonted pride, and appointed his progreſſes and viſitations to receive congratulations and homages from his confederates, and behaved himſelf in all things as one that had ſome new ſpirit of hope and courage put into him.

BUT on the Earl of *Eſſex* his part inſued immediately after this parley a ſtrange motion and project, which though no doubt he had harboured in his breaſt before; yet for any thing yet appeareth, he did not utter and break with any in it, before he had been confirmed and fortified in his purpoſe, by the combination and correſpondence which he found in *Tyrone* upon their conference. Neither is this a matter gathered out of reports, but confeſſed directly by two of his principal friends and aſſociates, being witneſſes upon their own knowledge, and of that which was ſpoken to themſelves: the ſubſtance of which confeſſion is this; That a little before my Lord's coming over into *England*, at the caſtle of *Dublin* where Sir *Chriſtopher Blunt* lay hurt, having been lately removed thither from *Reban*, a caſtle of *Thomas Lee*'s, and placed in a lodging that had been my Lord of *Southampton*'s; the Earl of *Eſſex* took the Earl of *Southampton* with him to viſit *Blunt*, and there being none preſent but they three, my Lord of *Eſſex* told them, he found it now neceſſary for him to go into *England*, and would adviſe with them of the manner of his going, ſince to go he was reſolved. And thereupon propounded unto them, that he thought it fit to carry with him of the army in *Ireland*, as much as he could conveniently tranſport, at leaſt the choice of it, to the number of two or three thouſand, to ſecure and make good his firſt deſcent on ſhore, purpoſing to land them at *Milford Haven* in *Wales*, or thereabouts: not doubting, but that his army would ſo increaſe within a ſmall time, by ſuch as would come in to him, as he ſhould be able to march with his power to *London*, and make his own conditions as he thought good. But both *Southampton* and *Blunt* diſſuaded him from this enterprize; *Blunt* alledging the hazard of it, and that it would make him odious: and *Southampton* utterly diſliking of that courſe, upon the ſame and many other reaſons. Howbeit, thereupon *Blunt* adviſed him rather to another courſe, which was to draw forth of the army ſome 200 reſolute gentlemen, and with thoſe to come over, and ſo to make ſure of the court, and ſo to make his own conditions. Which confeſſions it is not amiſs to deliver, by what a good providence of God they came to light: for, they could not be uſed at *Eſſex* arraignment to charge him, becauſe they were uttered after his death.

The Earl of *Southampton* and Sir *Chriſtopher Blunt*.

The ſubſtance of that which is confeſſed by *Southampton* and *Blunt*, touching *Eſſex* purpoſe to have tranſported into *England* the army of *Ireland*, and the changing of that deſign into the other deſign of ſurpriſing the Queen and the Court.

BUT

The ſpeech of Sir *Chriſtopher Blunt* at his arraignment, and the occaſion of the falling into the aforeſaid confeſſions.

But Sir *Chriſtopher Blunt* at his arraignment being charged that the Earl of *Eſſex* had ſet down under his hand, that he had been a principal inſtigator of him to his treaſons, in paſſion brake forth into theſe ſpeeches; That then he muſt be forced to diſcloſe what farther matters he had held my Lord from, and deſired for that purpoſe (becauſe the preſent proceeding ſhould not be interrupted) to ſpeak with the Lord Admiral and Mr. Secretary after his arraignment, and ſo fell moſt naturally and moſt voluntarily into this his confeſſion, which if it had been thought fit to have required of him at that time publickly, he had delivered before his conviction. And the ſame confeſſion he did after (at the time of his execution) conſtantly and fully confirm, diſcourſe particularly, and take upon his death, where never any man ſhewed leſs fear, nor a greater reſolution to die.

And the ſame matter ſo by him confeſſed, was likewiſe confeſſed with the ſame circumſtances of time and place by *Southampton*, being ſeverally examined thereupon.

So as now the world may ſee how long ſince my Lord put off his vizard, and diſcloſed the ſecrets of his heart to two of his moſt confident friends, falling upon that unnatural and deteſtable treaſon, whereupon all his former actions in his government in *Ireland*, (and God knows how long before) were but introductions.

The place of general of the horſe in the army of *Ireland* was conferred by *Eſſex* upon *Southampton*, contrary to her Majeſty's expreſs commandment.

But finding that theſe two perſons, which of all the reſt he thought to have found forwardeſt, *Southampton*, whoſe diſplacing he had made his own diſcontentment (having placed him, no queſtion to that end, to find cauſe of diſcontentment) and *Blunt*, a man ſo enterprizing and prodigal of his own life, (as himſelf termed himſelf at the bar) did not applaud to this his purpoſe, and thereby doubting how coldly he ſhould find others minded, that were not ſo near to him. And therefore condeſcending to *Blunt*'s advice to ſurprize the court, he did purſue that plot accordingly, and came over with a ſelected company of captains and voluntaries, and ſuch as he thought were moſt affectionate unto himſelf, and moſt reſolute, though not knowing of his purpoſe. So as even at that time every man noted and wondered what the matter ſhould be, that my Lord took his moſt particular friends and followers from their companies, which were countenance and means unto them to bring them over. But his purpoſe (as in part was touched before) was this; that if he held his greatneſs in court, and were not committed (which in regard of the miſerable and deplored eſtate he left *Ireland* in, whereby he thought the opinion here would be that his ſervice could not be ſpared, he made full account he ſhould not be) then, at the firſt opportunity, he would execute the ſurprize of her Majeſty's perſon. And if he were committed to the *Tower*, or to priſon for his contempts, (for beſides his other contempts, he came over expreſly againſt the Queen's prohibition under her ſignet) it might be the care of ſome of his principal friends, by the help of that choice and reſolute company which he brought over, to reſcue him.

But the pretext of his coming over was, by the efficacy of his own preſence and perſuaſion, to have moved and drawn her Majeſty to accept of ſuch conditions of peace as he had treated of with *Tyrone* in his private conference; which was indeed ſomewhat needful, the principal article of them being, That there ſhould be a general reſtitution of rebels in *Ireland* to all their lands and poſſeſſions, that they could pretend any right to, before their going out into rebellion; without reſervation of ſuch lands as were by act of parliament paſſed to the crown, and ſo planted with *Engliſh* both in the time of Q. *Mary*, and ſince; and without difference either of time of their going forth, or nature

ture of their offence, or other circumſtance, tending in effect to this; that all the Queen's good ſubjects, in moſt of the provinces, ſhould have been diſplanted, and the country abandoned to the rebels.

When this man was come over, his heart thus fraughted with treaſons, and preſented himſelf to her Majeſty; it pleaſed God, in his ſingular providence over her Majeſty, to guide and hem in her proceeding towards him in a narrow way of ſafety between two perils. For neither did her Majeſty leave him at liberty, whereby he might have commodity to execute his purpoſe; nor reſtrain him in any ſuch nature, as might ſignify or betoken matter of deſpair of his return to court and favour. And ſo the means of preſent miſchief being taken away, and the humours not ſtirred, this matter fell aſleep, and the thread of his purpoſes was cut off. For coming over about the end of *September*, and not denied acceſs and conference with her Majeſty, and then being commanded to his chamber at court for ſome days, and from thence to the Lord Keeper's houſe, it was conceived that theſe were no ill ſigns. At my Lord Keeper's houſe he remained till ſome few days before *Eaſter*, and then was removed to his own houſe, under the cuſtody of Sir *Richard Barkley*, and in that ſort continued till the end of *Trinity* term following.

For her Majeſty all this while looking into his faults with the eye of her princely favour, and loth to take advantage of his great offences, in other nature than as contempts, reſolved ſo to proceed againſt him, as might (to uſe her Majeſty's own words) tend *ad correctionem, & non ad ruinam.*

Nevertheless afterwards, about the end of *Trinity* term following, for the better ſatisfaction of the world, and to repreſs ſeditious bruits and libels which were diſperſed in his juſtification, and to obſerve a form of juſtice before he ſhould be ſet at full liberty; her Majeſty was pleaſed to direct, that there ſhould be aſſociate unto her privy council ſome choſen perſons of her nobility, and of her judges of the law; and before them his cauſe (concerning the breaking of his inſtructions for the *Northern* proſecution, and the manner of his treating with *Tyrone*, and his coming over, and leaving the kingdom of *Ireland* contrary to her Majeſty's commandment, expreſſed as well by ſignification thereof made under her royal hand and ſigner, as by a moſt binding and effectual letter written privately to himſelf) to receive a hearing; with limitation nevertheleſs, that he ſhould not be charged with any point of diſloyalty; and with like favour directed, that he ſhould not be called in queſtion in the open and ordinary place of offenders in the *Star-Chamber*, from which he had likewiſe by a moſt penitent and humble letter deſired to be ſpared, as that which would have wounded him for ever, as he affirmed, but in a more private manner at my Lord Keeper's houſe. Neither was the effect of the ſentence, that there paſſed againſt him, any more than a ſuſpenſion of the exerciſe of ſome of his places: at which time alſo, *Eſſex*, that could vary himſelf into all ſhapes for a time, infinitely deſirous (as by the ſequel now appeareth) to be at liberty to practiſe and revive his former purpoſes, and hoping to ſet into them with better ſtrength than ever, becauſe he conceived the people's hearts were kindled to him by his troubles, and that they had made great demonſtrations of as much; he did transform himſelf into ſuch a ſtrange and dejected humility, as if he had been no man of this world, with paſſionate proteſtations that he called God to witneſs, That he had made an utter divorce with the world; and he deſired her Majeſty's favour not for any worldly reſpect, but for a preparative for a *nunc dimittis*; and that the tears of his heart had quenched in him all humours of ambition.

All

All his to make her Majeſty ſecure, and to lull the world aſleep, that he was not a man to be held any ways dangerous.

Not many days after, Sir *Richard Barkley* his keeper was removed from him, and he ſet at liberty with this admonition only; That he ſhould not take himſelf to be altogether diſcharged, though he were left to the guard of none but his own diſcretion. But he felt himſelf no ſooner upon the wings of his liberty, but (notwithſtanding his former ſhews of a mortified eſtate of mind) he began to practiſe afreſh as buſily as ever, reviving his former reſolution; which was the ſurpriſing and poſſeſſing the Queen's perſon and the court. And that it may appear how early after his liberty he ſet his engines on work, having long before entertained into his ſervice, and during his government in *Ireland*, drawn near unto him in the place of his chief ſecretary, one *Henry Cuffe*, a baſe fellow by birth, but a great ſcholar, and indeed a notable traitor by the book, being otherwiſe of a turbulent and mutinous ſpirit againſt all ſuperiors.

This fellow in the beginning of *Auguſt*, which was not a month after *Eſſex* liberty granted, fell of practiſing with Sir *Henry Nevil*, that ſerved her Majeſty as legier ambaſſador with the *French* King, and then newly come over into *England* from *Bulloign*, abuſing him with a falſe lye and mere invention, that his ſervice was blamed and miſliked, and that the imputation of the breach of the treaty of peace held at *Bulloign*, was like to light upon him, (when there was no colour of any ſuch matter) only to diſtaſte him of others, and faſten him to my Lord, though he did not acquaint him with any particulars of my Lord's deſigns till a good while after. The declaration of Sir *Hen. Nevil.*

But my Lord having ſpent the end of the ſummer (being a private time, when every body was out of town and diſperſed) in digeſting his own thoughts, with the help and conference of Maſter *Cuffe*, they had ſoon ſet down between them the ancient principle of traitors and conſpirators, which was, to prepare many, and to acquaint few; and after the manner of mines, to make ready their powder, and place it, and then give fire but in the inſtant. Therefore, the firſt conſideration was of ſuch perſons as my Lord thought fit to draw to be of his party; ſingling out both of nobility and martial men, and others, ſuch as were diſcontented or turbulent, and ſuch as were weak of judgment, and eaſy to be abuſed, or ſuch as were wholly dependents and followers (for means or countenance) of himſelf, *Southampton*, or ſome other of his greateſt aſſociates.

And knowing there were no ſuch ſtrong and drawing cords of popularity as religion; he had not neglected, both at this time and long before, in a profane policy to ſerve his turn (for his own greatneſs,) of both ſorts and factions, both of catholicks and puritans, as they term them, turning his outſide to the one, and his inſide to the other; and making himſelf pleaſing and gracious to the one ſort by profeſſing zeal, and frequenting ſermons, and making much of preachers, and ſecretly underhand giving aſſurance to *Blunt*, *Davis*, and divers others, that (if he might prevail in his deſired greatneſs,) he would bring in a toleration of the catholick religion. The confeſſion of *Blunt* and *Davis*.

Then having paſſed the whole *Michaelmas* term in making himſelf plauſible, and in drawing concourſe about him, and in affecting and alluring men by kind provocations and uſage, wherein (becauſe his liberty was qualified) he neither forgot exerciſe of mind nor body, neither ſermon nor tennis-court, to give the occaſion and freedom of acceſs and concourſe unto him, and much other practice and device: about the end of that term, towards *Chriſtmas*, he grew

grew to a more framed reſolution of the time and manner, when and how he would put his purpoſe in execution. And firſt about the end of *Michaelmas* term, it paſſed as a kind of cipher and watch word amongſt his friends and followers, That my Lord would ſtand upon his guard; which might receive conſtruction, in a good ſenſe, as well guard of circumſpection, as guard of force: but to the more private and truſty perſons he was content it ſhould be expounded that he would be cooped up no more, nor hazard any more reſtraints or commandments.

The declaration of Sir *H. Nevil*, and confeſſion of Sir *Ferdinando Gorge*.

But the next care was how to bring ſuch perſons, as he thought fit for his purpoſe, into town together, without vent of ſuſpicion, to be ready at the time, when he ſhould put his deſign in execution; which he had concluded ſhould be ſome time in *Hilary* term; wherein he found many devices to draw them up, ſome for ſuits in law, and ſome for ſuits in court, and ſome for aſſurance of land: and one friend to draw up another, it not being perceived that all moved from one head. And it may be truly noted, that in the catalogue of thoſe perſons that were the eighth of *February* in the action of open rebellion, a man may find almoſt out of every county of *England* ſome, which could not be by chance or conſtellation: and in the particularity of examinations (too long to be rehearſed) it was eaſy to trace in what ſort many of them were brought up to town, and held in town upon ſeveral pretences. But in *Candlemas* term, when the time drew near, then was he content conſultation ſhould be had by certain choice perſons, upon the whole matter and courſe which he ſhould hold. And becauſe he thought himſelf and his own houſe more obſerved, it was thought fit that the meeting and conference ſhould be at *Drury-Houſe*, where Sir *Charles Davers* lodged. There met at this council the Earl of *Southampton*, with whom in former times he had been at ſome emulations and differences in court. But after, *Southampton* having married his kinſwoman, and plunged himſelf wholly into his fortune, and being his continual aſſociate in *Ireland*, he accounted of him as moſt aſſured unto him, and had long ago in *Ireland* acquainted him with his purpoſe, as was declared before. Sir *Charles Davers*, one exceedingly devoted to the Earl of *Southampton*, upon affection begun firſt upon the deſerving of the ſame Earl towards him, when he was in trouble about the murder of one *Long*. Sir *Ferdinando Gorge*, one that the Earl of *Eſſex* had of purpoſe ſent for up from his government at *Plymouth* by his letter, with particular aſſignation to be here before the ſecond of *February*. Sir *John Davis*, one that had been his ſervant, and raiſed by him, and that bare office in the *Tower*, being ſurveyor of the ordnance, and one that he greatly truſted: and *John Littleton*, one they reſpected for his wit and valour.

The confeſſion of *Blunt*.

The confeſſions of Sir *Ch. Davers*, 1. 2. Sir *J. Davis* 2. Sir *Ferdin. Gorge* 2. Sir *Chriſtoph. Blunt* 2. *Southampton* at the bar.

The conſultation and conference reſted upon three parts: the peruſal of a liſt of thoſe perſons, whom they took to be of their party; the conſideration of the action it ſelf which they ſhould ſet a-foot, and how they ſhould proceed in it; and the diſtribution of the perſons, according to the action concluded on, to their ſeveral employments.

The liſt contained the number of ſixſcore perſons, noblemen, and knights, and principal gentlemen, and was (for the more credit's ſake) of the Earl of *Eſſex* own hand-writing.

For the action it ſelf, there was propoſition made of two principal articles: the one of poſſeſſing the *Tower* of *London*; the other of ſurprizing her Majeſty's perſon and the court; in which alſo deliberation was had, what courſe to hold with the city, either towards the effecting of the ſurprize, or after it was effected.

For

For the *Tower* was alledged, the giving a reputation to the action, by getting into their hand the principal fort of the realm, with the ſtores and proviſions thereunto appertaining, the bridling of the city by that piece, and commodity of entrance in and poſſeſſing it, by the means of Sir *John Davis*. But this was by opinion of all rejected, as that which would diſtract their attempt from the more principal, which was the court, and as that which they made a judgment would follow incidently, if the court were once poſſeſſed.

But the later, which was the ancient plot, (as was well known to *Southampton*) was in the end, by the general opinion of them all, inſiſted and reſted upon.

And the manner how it ſhould be ordered and diſpoſed was this: That certain ſelected perſons of their number, ſuch as were well known in court, and might have acceſs without check or ſuſpicion, into the ſeveral rooms in court, according to the ſeveral qualities of the perſons, and the differences of the rooms, ſhould diſtribute themſelves into the preſence, the guard-chamber, the hall, and the utter court and gate, and ſome one principal man undertaking every ſeveral room with the ſtrength of ſome few to be joined with him, every man to make good his charge, according to the occaſion. In which diſtribution, Sir *Charles Davers* was then named to the preſence, and to the great chamber, where he was appointed, when time ſhould be, to ſeize upon the halberds of the guard; Sir *John Davis* to the hall; and Sir *Chriſtopher Blunt* to the utter gate; theſe ſeeming to them the three principal wards of conſideration: And that things being within the court in a readineſs, a ſignal ſhould be given and ſent to *Eſſex*, to ſet forward from *Eſſex-houſe*, being no great diſtance off. Whereupon *Eſſex*, accompanied with the noblemen of his party, and ſuch as ſhould be prepared and aſſembled at his houſe for that purpoſe, ſhould march towards the court: And that the former conſpirators already entered ſhould give correſpondence to them without, as well by making themſelves maſters of the gates to give them entrance, as by attempting to get into their hand upon the ſudden the halberds of the guard, thereby hoping to prevent any great reſiſtance within, and by filling all full of tumult and confuſion.

This being the platform of their enterprize, the ſecond act of this tragedy was alſo reſolved, which was, that my Lord ſhould preſent himſelf to her Majeſty, as proſtrating himſelf at her feet, and deſire the remove of ſuch perſons as he called his enemies, from about her. And after that my Lord had obtained poſſeſſion of the Queen, and the ſtate, he ſhould call his pretended enemies to a trial upon their lives, and ſummon a parliament, and alter the government, and obtain to himſelf and his aſſociates, ſuch conditions as ſeemed to him and them good.

There paſſed a ſpeech alſo in this conſpiracy of poſſeſſing the city of *London*, which *Eſſex* himſelf, in his own particular and ſecret inclination, had ever a ſpecial mind unto: not as a departure or going from his purpoſe of poſſeſſing the court, but as an inducement and preparative to perform it upon a ſurer ground: An opinion bred in him, (as may be imagined) partly by the great overweaning he had of the love of the citizens: but chiefly, in all likelihood, by a fear, that altho' he ſhould have prevailed in getting her Majeſty's perſon into his hands for a time, with his two or three hundred gentlemen, yet the very beams and graces of her Majeſty's magnanimity and prudent carriage in ſuch diſaſter, working with the natural inſtinct of loyalty, which of courſe (when fury is over) doth ever revive in the hearts of ſubjects of any good blood or mind (ſuch as his troop for the more part was com-

pounded of, though by him ſeduced and bewitched) would quickly break the knot, and cauſe ſome diſunion and ſeparation amongſt them, whereby he might have been left deſtitute, except he ſhould build upon ſome more popular number, according to the nature of all uſurping rebels, which do ever truſt more in the common people, than in perſons of ſort or quality. And this may well appear by his own plot in *Ireland*, which was to have come with the choice of the army, from which he was diverted, as before is ſhewed. So as his own courſes inclined ever to reſt upon the main ſtrength of the multitude, and not upon ſurprizes or the combinations of a few.

BUT to return: Theſe were the reſolutions taken at that conſultation, held by theſe five at *Drury-houſe*, ſome five or ſix days before the rebellion, to be reported to *Eſſex*, who ever kept in himſelf the binding and directing voice: which he did to prevent all differences that might grow by diſſent or contradiction. And beſides he had other Perſons, (which were *Cuffe* and *Blunt*) of more inwardneſs and confidence with him than theſe, (*Southampton* only excepted) which managed that conſultation. And, for the day of the enterprize, which is that muſt riſe out of the knowledge of all the opportunities and difficulties, it was referred to *Eſſex* his own choice and appointment: it being nevertheleſs reſolved, that it ſhould be ſome time before the end of *Candlemas Term*.

Sir *Henry Nevil*'s declaration.

BUT this council and the reſolutions thereof, were in ſome points refined by *Eſſex*, and *Cuffe*, and *Blunt*: for, firſt it was thought good, for the better making ſure of the utter gate of the court, and the greater celerity and ſuddenneſs, to have a troop at receipt to a competent number, to have come from the *Mews*, where they ſhould have been aſſembled without ſuſpicion in ſeveral companies, and from thence caſt themſelves in a moment upon the court-gate, and join with them which were within, while *Eſſex* with the main of his company were making forward.

IT was alſo thought fit, that becauſe they would be commonwealth's-men, and foreſee, that the buſineſs and ſervice of the publick ſtate ſhould not ſtand ſtill; they ſhould have ready at court, and at hand, certain other perſons to be offered, to ſupply the offices and places of ſuch her Majeſty's counſellors and ſervants, as they ſhould demand to be removed and diſplaced.

BUT chiefly it was thought good, that the aſſembling of their companies together, ſhould be upon ſome plauſible pretext; both to make divers of their company, that underſtood not the depth of the practices, the more willing to follow them; and to engage themſelves, and to gather them together the better without peril of detecting or interrupting: and again, to take the court the more unprovided, without any alarm given. So as now there wanted nothing but the aſſignation of the day: which nevertheleſs was reſolved indefinitely to be before the end of the term, as was ſaid before, for the putting in execution of this moſt dangerous and execrable treaſon. But God, who had in his divine providence long ago curſed this action with the curſe that the Pſalm ſpeaketh of, *That it ſhould be like the untimely fruit of a woman, brought forth before it came to perfection*, ſo diſpoſed above, that her Majeſty underſtanding by a general charm and muttering of the great and univerſal reſort to *Eſſex-houſe*, contrary to her princely admonition, and ſomewhat differing from his former manner (as there could not be ſo great fire without ſome ſmoke) upon the ſeventh of *February*, the afternoon before this rebellion, ſent to *Eſſex-houſe* Mr. Secretary *Herbert*, to require him to come before the Lords of her Majeſty's council, then ſitting

The confeſſion of *Blunt* 3.

in

in council at *Saliſbury-court*, being the Lord Treaſurer's houſe: where it was only intended, that he ſhould have received ſome reprehenſion, for exceeding the limitations of his liberty, granted to him in a qualified manner, without any intention towards him of reſtraint, which he, under colour of not being well, excuſed to do: but his own guilty conſcience applying it, that his trains were diſcovered, doubting peril in any farther delay, determined to haſten his enterprize, and to ſet it on foot the next day.

But then again, having ſome advertiſement in the evening, that the guards were doubled at court, and laying that to the meſſage he had received over-night; and ſo concluding that alarm was taken at court, he thought it to be in vain to think of the enterprize of the court, by way of ſurprize: but that now his only way was, to come thither in ſtrength, and to that end firſt to attempt the city: wherein he did but fall back to his own former opinion, which he had in no ſort neglected, but had formerly made ſome overtures to prepare the city to take his part; relying himſelf (beſides his general conceit, that himſelf was the darling and minion of the people, and ſpecially of the city) more particularly upon aſſurance given of *Thomas Smith*, then ſheriff of *London*, a man well beloved amongſt the citizens, and one that had ſome particular command of ſome of the trained forces of the city, to join with him. Having therefore concluded upon this determination, now was the time to execute in fact all that he had before in purpoſe digeſted.

First therefore, he concluded of a pretext which was ever part of the plot, and which he had meditated upon and ſtudied long before. For finding himſelf (thanks be to God) to ſeek, in her Majeſty's government, of any juſt pretext in matter of ſtate, either of innovation, oppreſſion, or any unworthineſs: As in all his former diſcontentments, he had gone the beaten path of traitors, turning their imputation upon counſellors, and perſons of credit with their ſovereign; ſo now he was forced to deſcend to the pretext of a private quarrel, giving out this ſpeech, how that evening, when he ſhould have been called before the Lords of the council, there was an ambuſcade of muſketeers placed upon the water, by the device of my Lord *Cobham* and Sir *Walter Raleigh*, to have murdered him by the way as he paſſed: A matter of no probability, thoſe perſons having no ſuch deſperate eſtates or minds, as to ruin themſelves and their poſterity, by committing ſo odious a crime.

But contrariwiſe, certain it is, Sir *Ferdinando Gorge* accuſed *Blunt*, to have perſuaded him to kill, or at leaſt apprehend Sir *Walter Raleigh*; the latter whereof *Blunt* denieth not, and aſked Sir *Walter Raleigh* forgiveneſs at the time of his death. Confeſſion of Sir *Ferdinando Gorge*.

But this pretext, being the beſt he had, was taken: and then did meſſages and warnings fly thick up and down to every particular nobleman and gentleman, both that evening and the next morning, to draw them together in the forenoon to *Eſſex-houſe*, diſperſing the foreſaid fable, That he ſhould have been murdered; ſave that it was ſometime on the water, ſometime in his bed, varying according to the nature of a lye. He ſent likewiſe the ſame night certain of his inſtruments, as namely, one *William Temple* his ſecretary, into the city to diſperſe the ſame tale, having increaſed it ſome few days before by an addition, That he ſhould have been likewiſe murdered by ſome Jeſuits to the number of four: and to fortify this pretext, and to make the more buz of the danger he ſtood in, he cauſed that night a watch to be kept all night long, towards the ſtreet, in his houſe. The next morning,

ing, which was *Sunday*, they came unto him of all hands, according to his meſſages and warnings: Of the Nobility, the Earls of *Rutland*, *Southampton*, and the Lord *Sands*, and Sir *Henry Parker*, commonly called the *Lord Mountegle*; beſides divers Knights and principal Gentlemen and their followers, to the number of ſome three hundred. And alſo it being *Sunday*, and the hour when he had uſed to have a ſermon at his houſe, it gave cauſe to ſome, and colour to others to come upon that occaſion. As they came, my Lord ſaluted and embraced, and to the generality of them, gave to underſtand, in as plauſible terms as he could, That his life had been ſought, and that he meant to go to the court and declare his griefs to the Queen, becauſe his enemies were mighty, and uſed her Majeſty's name and commandment, and deſired their help to take his part: But unto the more ſpecial perſons he ſpake high and in other terms, telling them, That he was ſure of the city, and would put himſelf into that ſtrength, that her Majeſty ſhould not be able to ſtand againſt him, and that he would take revenge of his enemies.

The confeſſion of the Earl of *Rutland*.

All the while after eight of the clock in the morning, the gates to the ſtreet and water were ſtrongly guarded, and men taken in and let forth by diſcretion of thoſe that held the charge, but with ſpecial caution of receiving in ſuch as came from court, but not ſuffering them to go back without my Lord's ſpecial direction, to the end no particularity of that which paſſed there might be known to her Majeſty.

About ten of the clock, her Majeſty having underſtanding of this ſtrange and tumultuous aſſembly at *Eſſex-houſe*, yet in her princely wiſdom and moderation thought to caſt water upon this fire before it brake forth to farther inconvenience: and therefore uſing authority before ſhe would uſe force, ſent unto him four perſons of great honour and place, and ſuch as he ever pretended to reverence and love, to offer him juſtice for any griefs of his, but yet to lay her royal commandment upon him to diſperſe his company, and upon them to withdraw themſelves.

The declaration of the Lord Keeper, the Earl of *Worceſter*, the Lord Chief Juſtice, under their hands.

The oath of the Lord Chief Juſtice *viva voce*.

The declaration of the Earl of *Worceſter*, *viva voce*.

These four honourable perſons, being the Lord Keeper of the great ſeal of *England*, the Earl of *Worceſter*, the Comptroller of her Majeſty's houſhold, and the Lord Chief Juſtice of *England*, came to the houſe, and found the gates ſhut upon them. But after a little ſtay, they were let in at the wicket; and as ſoon as they were within, the wicket was ſhut, and all their ſervants kept out, except the bearer of the ſeal. In the court they found the Earls with the reſt of the company, the court in a manner full, and upon their coming towards *Eſſex*, they all flocked and thronged about them: whereupon the Lord Keeper in an audible voice delivered to the Earl the Queen's meſſage, That they were ſent by her Majeſty to underſtand the cauſe of this their aſſembly, and to let them know that if they had any particular cauſe of griefs againſt any perſons whatſoever, they ſhould have hearing and juſtice.

Whereupon the Earl of *Eſſex* in a very loud and furious voice declared, That his life was ſought, and That he ſhould have been murdered in his bed, and That he had been perfidiouſly dealt withal; and other ſpeeches to the like effect. To which the Lord Chief Juſtice ſaid, if any ſuch matter were attempted or intended againſt him, it was fit for him to declare it, aſſuring him both a faithful relation on their part, and that they could not fail of a princely indifferency and juſtice on her Majeſty's part.

To which the Earl of *Southampton* took occaſion to object the aſſault made upon him, by the Lord *Gray*: which my Lord Chief Juſtice returned upon

upon him, and ſaid, that in that caſe juſtice had been done, and the party was in priſon for it.

THEN the Lord Keeper required the Earl of *Eſſex*, that if he would not declare his griefs openly, yet that then he would impart them privately; and then they doubted not to give him or procure him ſatisfaction.

UPON this there aroſe a great clamour among the multitude: Away, my Lord, they abuſe you, they betray you, they undo you, you loſe time. Whereupon my Lord Keeper put on his hat, and ſaid with a louder voice than before, My Lord, let us ſpeak with you privately, and underſtand your griefs; and I do command you all upon your allegiance, to lay down your weapons and to depart. Upon which words the Earl of *Eſſex* and all the reſt, as diſdaining commandment, put on their hats; and *Eſſex* ſomewhat abruptly went from him into the houſe, and the counſellors followed him, thinking he would have private conference with them as was required.

AND as they paſſed through the ſeveral rooms, they might hear many of the diſordered company cry, Kill them, kill them; and others crying, Nay, but ſhop them up, keep them as pledges, caſt the great ſeal out at the window; and other ſuch audacious and traitorous ſpeeches. But *Eſſex* took hold of the occaſion and advantage, to keep in deed ſuch pledges if he were diſtreſſed, and to have the countenance to lead them with him to the court, eſpecially the two great magiſtrates of juſtice, and the great ſeal of *England* if he prevailed, and to deprive her Majeſty of the uſe of their counſel in ſuch a ſtrait, and to engage his followers in the very beginning by ſuch a capital act, as the impriſonment of counſellors carrying her Majeſty's royal commandment for the ſuppreſſing of a rebellious force.

AND after that they were come up into his book-chamber, he gave order they ſhould be kept faſt, giving the charge of their cuſtody principally to Sir *John Davis*, but adjoined unto him a warder, one *Owen Saliſbury*, one of the moſt ſeditious and wicked perſons of the number, having been a notorious robber, and one that ſerved the enemy under Sir *William Stanley*, and that bare a ſpecial ſpleen unto my Lord-Chief Juſtice; who guarded theſe honourable perſons with muſkets charged and matches ready fired at the chamber door.

THIS done, the Earl (notwithſtanding my Lord Keeper ſtill required to ſpeak with him) left the charge of his houſe with Sir *Gilly Merick*; and, uſing theſe words to my Lord Keeper, Have patience for a while, I will go take order with the Mayor and Sheriffs for the city, and be with you again within half an hour; iſſued with his troop into *London*, to the number of two hundred, beſide thoſe that remained in the houſe, choice men for hardineſs and valour, unto whom ſome gentlemen and one nobleman did after join themſelves.

BUT from the time he went forth, it ſeems God did ſtrike him with the ſpirit of amazement, and brought him round again to the place whence he firſt moved.

FOR after he had once by *Ludgate* entered into the city, he never had ſo much as the heart or aſſurance to ſpeak any ſet or confident ſpeech to the people, (but repeated only over and over his tale as he paſſed by, that he ſhould have been murdered,) nor to do any act of foreſight or courage; but he that had vowed he would never be cooped up more, cooped himſelf firſt within the walls of the city, and after within the walls of an houſe, as arreſted by God's juſtice as an example of diſloyalty. For paſſing through *Cheapſide*, and ſo towards *Smith*'s houſe, and finding though ſome came about him, yet none

The confeſſion of the Earl of *Rutland*. The Lord *Sandys*.

joined or armed with him, he provoked them by ſpeeches as he paſſed to arm, telling them, they did him hurt and no good, to come about him with no weapons.

But there was not in ſo populous a city, where he thought himſelf held ſo dear, one man, from the chiefeſt citizen to the meaneſt artificer or prentice, that armed with him: ſo as being extremely appalled, as divers that happened to ſee him then might viſibly perceive in his face and countenance, and almoſt moulten with ſweat, though without any cauſe of bodily labour but only by the perplexity and horror of his mind, he came to *Smith*'s houſe the ſheriff, where he refreſhed himſelf a little and ſhifted him.

But the mean while it pleaſed God, that her Majeſty's directions at court, though in a caſe ſo ſtrange and ſudden, were judicial and ſound. For firſt there was commandment in the morning given unto the city, that every man ſhould be in a readineſs both in perſon and armour, but yet to keep within his own door, and to expect commandment; upon a reaſonable and politick conſideration, that had they armed ſuddenly in the ſtreets, if there were any ill diſpoſed perſons, they might arm on the one ſide and turn on the other, or at leaſt, if armed men had been ſeen to and fro, it would have bred a greater tumult and more bloodſhed; and the nakedneſs of *Eſſex*'s troop would not have ſo well appeared.

And ſoon after, direction was given that the Lord *Burghley*, taking with him the king of heralds, ſhould declare him traitor in the principal parts of the city; which was performed with good expedition and reſolution, and the loſs and hurt of ſome of his company. Beſides that, the Earl of *Cumberland*, and Sir *Thomas Gerard* knight-marſhal, rode into the city, and declared and notified to the people that he was a traytor: from which time divers of his troop withdrawing from him, and none other coming in to him, there was nothing but deſpair. For having ſtayed a while, as is ſaid, at Sheriff *Smith*'s houſe, and there changing his pretext of a private quarrel, and publiſhing, that the realm ſhould have been ſold to the *Infanta*, the better to ſpur on the people to riſe, and called, and given commandment to have arms brought and weapons of all ſorts, and being ſoon after advertiſed of the proclamation, he came forth in a hurry.

The confeſſion of the Earl of *Rutland*. *Eſſex*'s confeſſion at the bar.

So having made ſome ſtay in *Gracechurch-ſtreet*, and being diſmayed upon knowledge given to him that forces were coming forwards againſt him under the conduct of the Lord Admiral, the lieutenant of her Majeſty's forces; and not knowing what courſe to take, he determined in the end to go back towards his own houſe, as well in hope to have found the counſellors there, and by them to have ſerved ſome turn, as upon truſt that towards night his friends in the city would gather their ſpirits together, and reſcue him, as himſelf declared after to the lieutenant of the tower.

But for the counſellors, it had pleaſed God to make one of the principal offenders his inſtrument for their delivery; who ſeeing my lord's caſe deſperate, and contriving how to redeem his fault and ſave himſelf, came to Sir *John Davis*, and Sir *Gilly Mericke*, as ſent from my Lord; and ſo procured them to be releaſed.

But the Earl of *Eſſex*, with his company that was left, thinking to recover his houſe, made on by land towards *Ludgate*; where being reſiſted by a company of pikemen and other forces, gathered together by the wiſe and diligent care of the Biſhop of *London*, and commanded by Sir *John Luſon*, and yet attempting to clear the paſſage, he was with no great difficulty repulſed. At which encounter Sir *Chriſtopher Blunt* was ſore wounded, and

young

young *Tracy* ſlain on his part; and one *Waits* on the Queen's part, and ſome others. Upon which repulſe he went back and fled towards the water-ſide, and took boat at *Queenhithe*, and ſo was received into *Eſſex*'s houſe at the water-gate, which he fortified and barricado'd; but inſtantly the Lord Lieutenant ſo diſpoſed his companies, as all paſſage and iſſue forth was cut off from him both by land and by water, and all ſuccours that he might hope for were diſcouraged: and leaving the Earl of *Cumberland*, the Earl of *Lincoln*, the Lord *Thomas Howard*, the Lord *Gray*, the Lord *Burghley*, and the Lord *Compton*, Sir *Walter Raleigh*, Sir *Thomas Gerard*, with divers others, before the houſe to landward, my Lord Lieutenant himſelf thought good, taking with him the Lord of *Effingham*, Lord *Cobham*, Sir *John Stanhope*, Sir *Robert Sidney*, M. *Foulk Grevill*, with divers others, to aſſail the garden and banqueting-houſe on the water-ſide, and preſently forced the garden, and won to the walls of the houſe, and was ready to have aſſailed the houſe; but out of a chriſtian and honourable conſideration, underſtanding that there were in the houſe the Counteſs of *Eſſex*, and the Lady *Rich*, with their gentlewomen, let the Earl of *Eſſex* know by Sir *Robert Sidney*, that he was content to ſuffer the ladies and gentlewomen to come forth. Whereupon *Eſſex* returning the Lord Lieutenant thanks for the compaſſion and care he had of the ladies, deſired only to have an hour's reſpite to make way for their going out, and an hour after to barricado the place again: which becauſe it could make no alteration to the hindrance of the ſervice, the Lord Lieutenant thought good to grant. But *Eſſex* having had ſome talk within of a ſally, and deſpairing of the ſucceſs, and thinking better to yield himſelf, ſent word, that upon ſome conditions he would yield.

But the Lord Lieutenant utterly refuſing to hear of capitulations, *Eſſex* deſired to ſpeak with my Lord, who thereupon went up cloſe to the houſe; and the late Earls of *Eſſex* and *Southampton*, with divers other lords and gentlemen their partakers, preſented themſelves upon the leads; and *Eſſex* ſaid, he would not capitulate, but intreat; and made three petitions. The firſt, that they might be civilly uſed: whereof the Lord Lieutenant aſſured them. The ſecond, that they might have an honourable tryal: whereof, the Lord Lieutenant anſwered, they needed not to doubt. The third, that he might have *Aſhton* a preacher with him in priſon for the comfort of his ſoul: which the Lord Lieutenant ſaid he would move to her Majeſty, not doubting of the matter of his requeſt, though he could not abſolutely promiſe him that perſon. Whereupon they all, with the ceremony amongſt martial men accuſtomed, came down and ſubmitted themſelves, and yielded up their ſwords, which was about ten of the clock at night; there having been ſlain in holding of the houſe by muſket-ſhot *Owen Saliſbury*, and ſome few more on the part of my Lord, and ſome few likewiſe ſlain and hurt on the Queen's part; and preſently, as well the Lords as the reſt of their confederates of quality, were ſeverally taken into the charge of divers particular lords and gentlemen, and by them conveyed to the tower and other priſons.

So as this action, ſo dangerous in reſpect of the perſon of the leader, the manner of the combination, and the intent of the plot, brake forth and ended within the compaſs of twelve hours, and with the loſs of little blood, and in ſuch ſort as the next day all courts of juſtice were open, and did ſit in their accuſtomed manner, giving good ſubjects, and all reaſonable men juſt cauſe to think, not the leſs of the offender's treaſon, but the more of her Majeſty's princely magnanimity and prudent foreſight in ſo great a peril, and chiefly of God's goodneſs, that hath bleſſed her Majeſty in this, as in many things elſe, with ſo rare and divine felicity.

The

The effect of the evidence given, at the ſeveral arraignments of the late Earls of *Eſſex* and *Southampton*, before the Lord Steward; and of Sir *Chriſtopher Blunt*, and Sir *Charles Davers*, and others, before great and honourable commiſſioners of *Oyer* and *Terminer*: and of the anſwers and defences which the ſaid offenders made for themſelves; and the replies made upon ſuch their defences: With ſome other circumſtances of the proceedings, as well at the ſame arraignments as after.

Some queſtion was made by the Earl of *Eſſex*, whether he might challenge any of the Peers. But anſwer was made by the Judges, that the law had that reputation of the Peers, that it truſted them both without oath and challenge.

THE two late Earls of *Eſſex* and *Southampton* were brought to their trial the nineteenth of *February*, eleven days after the rebellion. At which trial there paſſed upon them twenty five Peers, a greater number than hath been called in any former precedent. Amongſt whom her Majeſty did not forbear to uſe many that were of near alliance and blood to the Earl of *Eſſex*, and ſome others, that had their ſons and heirs apparent that were of his company, and followed him in the open action of rebellion. The Lord Steward then in commiſſion, (according to the ſolemnity in ſuch trials received) was the Lord *Buckhurſt*, Lord High Treaſurer, who with gravity and temperance directed the evidence, and moderated, and gave the judgment. There was alſo an aſſiſtance of eight Judges, the three chief, and five others. The hearing was with great patience and liberty: the ordinary courſe not being held, to ſilence the priſoners till the whole ſtate of the evidence was given in; but they being ſuffered to anſwer articulaetly to every branch of the evidence, and ſometimes to every particular depoſition, whenſoever they offered to ſpeak: And not ſo only, but they were often ſpared to be interrupted, even in their digreſſions and ſpeeches not much pertinent to their cauſe. And always when any doubt in law was moved, or when it was required either by the priſoners or the Peers, the Lord Steward required the Judges to deliver the law; who gave their opinions ſeverally, not barely yea or no, but at large with their reaſons.

IN the indictment were not laid or charged the treaſons of *Ireland*, becauſe the greateſt matter, which was the deſign to bring over the army of *Ireland*, being then not confeſſed nor known; and it was not thought convenient to ſtuff the indictment with matters which might have been conceived to be chiefly gathered by curious inquiſition, and grounded upon report or preſumption, when there was other matter ſo notorious. And beſides, it was not unlikely, that in his caſe, to whom many were ſo partial, ſome (who would not conſider how things came to light by degrees) might have reported, that he was twice called in queſtion about one offence. And therefore the late treaſons of his rebellion and conſpiracy were only comprehended in the indictment, with the uſual clauſes and conſequents in law, of compaſſing the Queen's death, deſtruction, and deprivation, and levying war and the like.

The evidence conſiſted of two parts: the plot of ſurprizing her Majeſty's perſon in court, and the open rebellion in the city.

THE plot was opened according to the former narration, and proved by the ſeveral confeſſions of four witneſſes, fully and directly concurring in the point;

point; Sir *Chriſtopher Blunt*, Sir *Charles Davers*, Sir *John Davis*, and Sir *Ferdinando Gorge*. Of which number, though Sir *Chriſtopher Blunt* were not at the counſel held at *Drury-houſe*, no more than *Eſſex* himſelf was; yet he was privy to that which paſſed. Sir *Ferdinando Gorge* being priſoner in the *Gatehouſe*, near the place of trial, was (at the requeſt of the Earl of *Eſſex*) brought thither, and avouched *viva voce*, his confeſſion in all things.

And theſe four proved all particularities of ſurprizing the court, and the manner of putting the ſame in execution, and the diſtributing and naming of the principal perſons and actors to their ſeveral charges; and the calling of my Lord's pretended enemies to trial for their lives, and the ſummoning of a parliament, and the altering of the government. And Sir *Chriſtopher Blunt*, and Sir *John Davis* from Sir *Chriſtopher Blunt*, did ſpeak to the point of bringing in a toleration of the catholic religion.

For the overt rebellion in the city itſelf, it was likewiſe opened, according to the former narration, and divided itſelf naturally into three parts.

First, the impriſonment of the counſellors, bringing her Majeſty's royal commandment to them, upon their allegiance to diſperſe their forces. Secondly, the entering the city, and the ſtirring of the people to riſe, as well by provoking them to arm, as by giving forth the ſlanders that the realm was ſold to the *Spaniard*, and the aſſailing of the Queen's forces at *Ludgate*. And thirdly, the reſiſtance and keeping of the houſe againſt her Majeſty's forces, under the charge and conduct of the Lord Lieutenant.

And albeit theſe parts were matters notorious, and within almoſt every man's view and knowledge; yet, for the better ſatisfaction of the peers, they were fully proved by the oath of the Lord Chief Juſtice of *England*, being there preſent, *viva voce*, and the declaration of the Earl of *Worceſter*, being one of the Peers likewiſe, *viva voce*, touching ſo much as paſſed about the impriſonment of themſelves and the reſt; and by the confeſſions of the Earl of *Rutland*, the Lord *Sandys*, the Lord *Cromwell*, and others.

The defence of the late Earl of *Eſſex*, touching the plot and conſultation at *Drury-houſe*, was: That it was not proved that he was at it; and that they could ſhew nothing proving his conſent or privity under his hand.

Touching the action in the city, he juſtified the pretext of the danger of his life to be a truth. He ſaid, that his ſpeech that the realm ſhould have been ſold to the *Infanta* of *Spain*, was grounded upon a report he had heard, that Sir *Robert Cecil* ſhould ſay privately, That the *Infanta*'s title to the crown (after her Majeſty) was as good as any other. He excuſed the impriſonment of the counſellors to have been againſt his mind, forced upon him by his unruly company. He proteſted he never intended in his heart any hurt to her Majeſty's perſon; that he did deſire to ſecure his acceſs to her, for which purpoſe he thought to pray the help of the city, and that he did not arm his men in warlike ſort, nor ſtruck up drum, nor the like.

The defence of the late Earl of *Southampton* to his part in the plot, and conſultation at *Drury-houſe*, was: That it was a matter debated, but not reſolved nor concluded; and that the action which was executed, was not the action which was conſulted upon. And for the open action in the city, he concurred with *Eſſex*, with proteſtation of the clearneſs of his mind for any hurt to the Queen's perſon: and that it was but his affection to my Lord of *Eſſex* that had drawn him into the cauſe. This was the ſubſtance and beſt of both their defences. Unto which the reply was:

Defence. *TO the point that the late Earl of* Eſſex *was not at the conſultation at* Drury-houſe :

Reply. It was replied, that it was proved by all the witneſſes, that that conſultation was held by his ſpecial appointment and direction, and that both the liſt of the names, and the principal articles, were of his own hand-writing. And whereas he ſaid, they could not be ſhewed extant under his hand ; it was proved by the confeſſion of my Lord of *Rutland*, and the Lord *Sandys*, that he had provided for that himſelf. For after he returned out of the city to his own houſe, he burned divers papers which he had in a cabinet, becauſe (as himſelf ſaid) they ſhould tell no tales.

Defence. *TO the point which* Southampton alledged, *That the conſultation at* Drury-houſe, *upon the liſt and articles in writing, was not executed :*

Reply. It was replied, that both that conſultation in that manner held, if none other act had followed, was treaſon: and that the rebellion following in the city, was not a deſiſting from the other plot, but an inducement and purſuance of it ; their meaning being plain on all parts, that after they had gotten the aid of the city, they would have gone and poſſeſſed the court.

Defence. *TO the point that it was a truth that* Eſſex *ſhould have been aſſailed by his private enemies :*

Reply. First, he was required to deliver who it was that gave him the advertiſement of it; becauſe otherwiſe it muſt light upon himſelf, and be thought his own invention : whereunto he ſaid, that he would name no man that day.

Then it was ſhewed how improbable it was, conſidering that my Lord *Cobham* and Sir *Walter Raleigh* were men, whoſe eſtates were better ſettled and eſtabliſhed, than to overthrow their fortunes by ſuch a crime.

Besides, it was ſhewed how the tale did not hang together, but varied in it ſelf, as the tale of the two judges did, when one ſaid, under the mulberry-tree, and another ſaid, under the fig-tree. So ſometimes it was, that he ſhould have been murdered in his bed, and ſometimes upon the water, and ſometimes it ſhould have been performed by Jeſuits ſome days before.

Thirdly, it was aſked what reference the going into the city for ſuccour againſt any his private enemies, had to the impriſoning of the Lord Keeper, and the Lord Chief Juſtice, perſons that he pretended to love and reſpect ; and the Earl of *Worceſter* his kinſman, and Maſter Comptroller his uncle, and the publiſhing to the people, that the realm ſhould have been ſold to the *Spaniard.*

And laſtly, it was ſaid, that theſe were the ancient footſteps of former traytors, to make their quarrel as againſt their private enemies ; becauſe God unto lawful Kings did ever impart ſuch beams of his own glory, as traytors could not look ſtrait upon them, but ever turned their pretences againſt ſome about them. And that this action of his reſembled the action of *Piſiſtratus* of *Athens*, that proceeded ſo far in this kind of fiction and diſſimulation, as he lanced his own body, and came hurt and wounded before the people, as having been aſſailed by his private enemies ; and by colour thereof obtained a guard about his perſon, by help of whom, he after uſurped upon the ſtate.

Defence. *TO the point that he heard it reported Mr. Secretary ſhould ſay, that the* Infanta's *title to the crown (after her Majeſty) was as good as any other.*

Reply. Upon this his allegation, Mr. Secretary ſtanding out of ſight in a private place, only to hear, (being much moved with ſo falſe and foul an accuſation) came ſuddenly forth, and made humble requeſt to the Lord Steward, that

that he might have the favour to anſwer for himſelf. Which being granted him, in reſpect of the place he carrieth, (after a bitter conteſtation on his part with the Earl, and a ſerious proteſtation of his alienation of heart from the *Spaniſh* nation in any ſuch condition) he ſtill urged the Earl to name the reporter, that all the circumſtances might be known. But the Earl ſtill warily avoiding it, Mr. Secretary replied, that ſeeing he would alledge no author, it ought to be reputed his own fiction. Whereupon the Earl of *Eſſex* ſaid, though his own conſcience was a ſufficient teſtimony to himſelf that he had not invented any untruth, yet he would affirm thus much for the world's farther ſatisfaction in that behalf; that the Earl of *Southampton* alſo had heard ſo much reported of Mr. Secretary; but ſaid ſtill that he (for his part) would name no body. Whereupon Mr. Secretary adjured the Earl of *Southampton*, by all former friendſhip, (which had been indeed very great between them) that he would declare the perſon; which he did preſently, and ſaid it was Mr. Comptroller. At which ſpeech Mr. Secretary ſtrait took hold and ſaid, that he was glad to hear him named of all others; for howſoever ſome malicious perſon might peradventure have been content, to give credit to ſo injurious a conceit of him, (eſpecially ſuch as were againſt the peace wherein he was employed, and for which the Earl of *Eſſex* had ever hated him, being ever deſirous to keep an army on his own dependency) yet he did think no man of any underſtanding would believe that he could be ſo ſenſeleſs, as to pick out the Earl of *Eſſex* his uncle to lay open to him his affection to that nation, in a matter of ſo odious and pernicious conſequence; and ſo did very humbly crave it at the hands of the Lord Steward, and all the Peers, that Mr. Comptroller might be ſent for, to make good his accuſation.

THEREUPON the Lord Steward ſent a Serjeant at arms for Mr. Comptroller, who preſently came thither, and did freely and ſincerely deliver, that he had only ſaid (though he knew not well to whom) that Mr. Secretary and he walking in the garden at court one morning about two years ſince, and talking caſually of foreign things, Mr. Secretary told him, that one *Doleman* had maintained in a book (not long ſince printed) that the *Infanta* of *Spain* had a good title to the crown of *England*, which was all, as Mr. Comptroller ſaid, that ever he heard Mr. Secretary ſpeak of that matter. And ſo the weak foundation of that ſcandal being quickly diſcerned, that matter ended; all that could be proved, being no other, than that Mr. Comptroller had told another, who had told the Earl of *Eſſex*, that Mr. Secretary ſaid to him, that ſuch a book ſaid ſo; which every man could ſay that had read it, and no man better knew than the Earl himſelf, to whom it was dedicated.

Defence. *TO the point of both their proteſtations, that they intended no hurt to her Majeſty's perſon:*

Reply. FIRST, the judges delivered their opinions for matter in law upon two points: the one, that in caſe where a ſubject attempteth to put himſelf in ſuch ſtrength as the King ſhall not be able to reſiſt him, and to force and compel the King to govern otherwiſe than according to his own royal authority and direction, it is manifeſt rebellion. The other, that in every rebellion the law intendeth as a conſequent, the compaſſing the death and deprivation of the King, as foreſeeing that the rebel will never ſuffer that King to live or reign, which might puniſh or take revenge of his treaſon and rebellion. And it was inforced by the Queen's counſel, that this is not only the wiſdom of the laws of the realm which ſo defineth of it, but it is alſo the cenſure of foreign laws, the concluſion of common reaſon, which is the ground of all laws, and the demonſtrative aſſertion of experience, which is the warranty

ranty of all reaſon. For firſt the civil law maketh this judgment, that treaſon is nothing elſe but *crimen laeſae majeſtatis*, or *diminutae majeſtatis*, making every offence which abridgeth or hurteth the power and authority of the prince, as an inſult or invading of the crown, and extorting the imperial ſceptre. And for common reaſon, it is not poſſible that a ſubject ſhould once come to that height as to give law to his ſovereign, but what with inſolency of the change, and what with terror of his own guiltineſs, he will never permit the King, if he can chooſe, to recover authority; nor for doubt of that to continue alive. And laſtly for experience, it is confirmed by all ſtories and examples, that the ſubject never obtained a ſuperiority and command over the King, but there followed ſoon after, the depoſing and putting of the King to death, as appeareth in our own chronicles in two notable particulars of two unfortunate Kings: the one of *Edward* the ſecond, who when he kept himſelf cloſe, for danger, was ſummoned by proclamation to come and take upon him the government of the realm: but as ſoon as he preſented himſelf was made priſoner, and ſoon after forced to reſign, and in the end tragically murdered in *Berkley* caſtle. And the other of King *Richard* the ſecond, who though the Duke of *Hertford*, after King *Henry* the fourth, preſented himſelf before him with three humble reverences, yet in the end was depoſed and put to death.

Defence. *TO the point of not arming his men otherwiſe than with piſtols, rapiers and daggers, it was replied:*

Reply. THAT that courſe was held upon cunning, the better to inſinuate himſelf into the favour of the city, as coming like a friend with an *All hail*, or kiſs, and not as an enemy, making full reckoning that the city would arm him, and arm with him, and that he took the pattern of his action from the day of the barricadoes at *Paris*, where the Duke of *Guiſe* entering the city but with eight gentlemen, prevailing with the city of *Paris* to take his part, as my Lord of *Eſſex* (thanks be to God) failed of the city of *London*, made the King (whom he thought likewiſe to have ſurprized) to forſake the town, and withdraw himſelf into other places, for his farther ſafety. And it was alſo urged againſt him out of the confeſſion of the Earl of *Rutland* and others, that he cried out to the citizens, That they did him hurt and no good, to come without weapons, and provoked them to arm: and finding they would not be moved to arm with him, ſought to arm his own troops.

THIS, point by point, was the effect of the reply. Upon all which evidence, both the Earls were found guilty of treaſon by all the ſeveral voices of every one of the Peers, and ſo received judgment.

The names of the Peers that paſſed upon the trial of the two Earls.

Earl of *Oxford.*
Earl of *Shrewſbury.*
Earl of *Derby.*
Earl of *Cumberland.*
Earl of *Worceſter.*
Earl of *Suſſex.*
Earl of *Hertford.*
Earl of *Lincoln.*
Earl of *Nottingham.*

Lord Viſcount *Rindon.*

Lord *De la Ware.*
Lord *Morley.*
Lord *Cobham.*
Lord *Stafford.*
Lord *Gray.*
Lord *Lumley.*
Lord *Windſor.*
Lord *Rich.*
Lord *Darcy de Chichey.*
Lord *Chandois.*
Lord *Hunſdon.*
Lord *St. John de Bletſo.*
Lord *Compton.*
Lord *Burghley.*
Lord *Howard* of *Walden.*

The

The names of the Judges that aſſiſted the Court.

Lord Chief Juſtice.
Lord Chief Juſtice of the *Common-Pleas.*
Lord Chief Baron.
Juſtice *Gawdy.*
Juſtice *Fenner.*
Juſtice *Walmeſly.*
Baron *Clerke.*
Juſtice *Kingſmill.*

Some particularities of that which paſſed after the arraignment of the late Earls, and at the time of the ſuffering of the Earl of *Eſſex.*

BUT the Earl of *Eſſex* finding that the conſultation at *Drury-houſe*, and the ſecret plots of his premeditated and prepenſed treaſons were come to light contrary to his expectation, was touched even at his parting from the bar with a kind of remorſe; eſpecially becauſe he had carried the manner of his anſwer, rather in a ſpirit of oſtentation and glory, than with humility and penitence: and brake out in the hall, while the lords were in conference, into theſe words; That ſeeing things were thus carried, he would ere it be long ſay more than yet was known. Which good motion of his mind being after his coming back to the tower, firſt cheriſhed by *M. D.* of *Norwich*, but after wrought on by the religious and effectual perſuaſions and exhortations of Mr. *Abdy Aſhton* his chaplain, the man whom he made ſuit by name to have with him for his ſoul's health, as one that of late time he had been moſt uſed unto, and found moſt comfort of, comparing it, when he made the requeſt, to the caſe of a patient, that in his extremity would be deſirous to have that phyſician that was beſt acquainted with his body: He ſent word the next day to deſire to ſpeak with ſome of the principal counſellors, with whom he deſired alſo that particularly Mr. Secretary might come for one. Upon which his requeſt, firſt the Lord Admiral and Mr. Secretary, and afterwards at two ſeveral times the Lord Keeper of the great ſeal, the Lord High Treaſurer, the Lord High Admiral, and Mr. Secretary repaired unto him: before whom, after he had aſked the Lord Keeper forgiveneſs for reſtraining him in his houſe, and Mr. Secretary for having wronged him at the bar, concerning the matter of the *Infanta*, with ſignification of his earneſt deſire to be reconciled to them, which was accepted with all Chriſtian charity and humanity; he proceeded to accuſe heavily moſt of his confederates for carrying malicious minds to the ſtate, and vehemently charged *Cuffe* his man to his own face, to have been a principal inſtigator of him in his treaſons, and then diſcloſed how far Sir *Henry Nevill* her Majeſty's late ambaſſador was privy to all the conſpiracy; of whoſe name till then there had been not ſo much as any ſuſpicion. And farther, at the Lords firſt coming to him, (not ſticking to confeſs that he knew her Majeſty could not be ſafe while he lived) did very earneſtly deſire this favour of the Queen, that he might die as privately as might be.

AND the morning before his execution, there being ſent unto him for his better preparation, Maſter Doctor *Mountford*, and Maſter Doctor *Barlow*, to join with Maſter *Abdy Aſhton* his chaplain, he did in many words thank God that he had given him a deeper inſight into his offence, being ſorry he had

The teſtimony of the three divines under their hands.

ſo ſtood upon his juſtification at his arraignment: ſince which time, he ſaid he was become a new man, and heartily thanked God alſo that his courſe was by God's providence prevented. For, if his project had taken effect, God knoweth (ſaid he) what harm it had wrought in the realm.

He did alſo humbly thank her Majeſty, that he ſhould die in ſo private a manner (for he ſuffered in the tower-yard, and not upon the hill by his own ſpecial ſuit;) leſt the acclamation of the people (for thoſe were his own words) might be a temptation to him: adding, that all popularity and truſt in man was vain, the experience whereof himſelf had felt: and acknowledged farther unto them, that he was juſtly and worthily ſpewed out (for that was alſo his own word) of the realm, and that the nature of his offence was like a leproſy that had infected far and near. And ſo likewiſe at the publick place of his ſuffering, he did uſe vehement deteſtation of his offence, deſiring God to forgive him his great, his bloody, his crying, and his infectious ſin: and ſo died very penitently, but yet with great conflict (as it ſhould ſeem) for his ſins. For he never mentioned nor remembered there, wife, children or friend, nor took particular leave of any that were preſent, but wholly abſtracted and ſequeſtered himſelf to the ſtate of his conſcience, and prayer.

The effect of that which paſſed at the arraignments of Sir *Chriſtopher Blunt*, Sir *Charles Davers*, Sir *John Davis*, Sir *Gilly Merick*, and *Henry Cuffe*.

THE fifth of *March*, by a very honourable commiſſion of *Oyer* and *Determiner*, directed to the Lord High Admiral, the Lord Chamberlain, Mr. Secretary, the Lord Chief Juſtice of *England*, Mr. Chancellor of the exchequer, Mr. Secretary *Herbert*, with divers of the judges, the commiſſioners ſitting in the court of the *Queen's-Bench*, there were arraigned and tried by a jury both of aldermen of *London*, and other gentlemen of good credit and ſort, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, Sir *John Davis*, Sir *Gilly Merick* and *Henry Cuffe*. The three firſt whereof, before they pleaded, aſked this queſtion of the judges: Whether they might not confeſs the indictment in part, and plead not guilty to it in the other part. But being reſolved by the judges, that their pleading muſt be general; they pleaded not guilty, as did likewiſe the other two, without any ſuch queſtion aſked. The reaſon of that queſtion was, as they confeſſed, in reſpect of the clauſe laid in the indictment; That they intended and compaſſed the death and deſtruction of the Queen's Majeſty: unto whoſe perſon (although they confeſſed at the bar, as they had done in their examinations, that their meaning was to come to her in ſuch ſtrength, as they ſhould not be reſiſted, and to require of her divers conditions and alterations of government, ſuch as in their confeſſions are expreſſed;) nevertheleſs they proteſted, they intended no perſonal harm to herſelf. Whereupon (as at the arraignment of the two Earls) ſo then again the judges delivered the rule of the law; that the wiſdom and foreſight of the laws of this land maketh this judgment, That the ſubject that rebelleth or riſeth in forcible manner to over-rule the royal will and power of the King, intendeth to deprive the King both of crown and life: and that the law judgeth not of the fact by the intent, but of the intent by the fact. And the Queen's counſel did again inforce that point, ſetting forth that it was no myſtery or quiddity of the common law, but it was a concluſion infallible of reaſon and experience:

for

for that the crown was not a ceremony or garland, but conſiſted of pre-eminence and power.

And therefore, when the ſubject will take upon him to give law to the King, and to make the power ſovereign and commanding to become ſubject and commanded; ſuch ſubject layeth hold of the crown, and taketh the ſword out of the King's hands. And that the crown was faſtened ſo cloſe upon the King's head, that it cannot be pulled off, but that head and life and all will follow, as all examples, both in foreign ſtories and here at home, do make manifeſt. And therefore, when their words did proteſt one thing, and their deeds did teſtify another, they were but like the precedent of the proteſtation uſed by *Manlius* the lieutenant of *Catiline*, that conſpired againſt the ſtate of *Rome*, who began his letter to the ſenate with theſe words, *Deos hominesque teſtor, patres conſcripti, nos nihil aliud, &c.*

And it was ſaid farther, that admitting their proteſtations were ſo far true, that they had not at that time in their minds a formed and diſtinct cogitation to have deſtroyed the Queen's perſon; yet nothing was more variable and mutable than the mind of man, and ſpecially *Honores mutant mores*: when they were once aloft, and had the Queen in their hands, and were peers in my Lord of *Eſſex* his parliament, who could promiſe of what mind they would then be? eſpecially when my Lord of *Eſſex* at his arraignment had made defence of his firſt action of impriſoning the privy counſellors, by pretence that he was inforced to it by his unruly company. So that if themſelves ſhould not have had, or would not ſeem to have had that extreme and deviliſh wickedneſs of mind, as to lay violent hands upon the Queen's ſacred perſon; yet, what muſt be done to ſatisfy the multitude and ſecure their party, muſt be then the queſtion: Wherein the example was remembered of *Richard* the third, who (though he were King in poſſeſſion, and the rightful inheritors but infants) could never ſleep quiet in his bed, till they were made away. Much leſs would a Catilinary knot and combination of rebels (that did riſe without ſo much as the fume of a title) ever indure, that a Queen that had been their ſovereign, and had reigned ſo many years in ſuch renown and policy, ſhould be longer alive than made for their own turn. And much ſpeech was uſed to the ſame end. So that in the end, all thoſe three at the bar ſaid, that now they were informed, and that they deſcended into a deeper conſideration of the matter, they were ſorry they had not confeſſed the indictment. And Sir *Chriſtopher Blunt*, at the time of his ſuffering, diſcharged his conſcience in plain terms, and ſaid publickly before all the people, that he ſaw plainly with himſelf, that if they could not have obtained all that they had would, they muſt have drawn blood even from the Queen herſelf. The confeſſion of *Blunt* at his death, which is ſet down in the end.

The evidence given in againſt them three, was principally their own confeſſions, charging every one himſelf, and the other, and the reſt of the evidence uſed at the arraignment of the late Earls, and mentioned before: ſave that becauſe it was perceived, that that part of the charge would take no labour nor time, being plain matter and confeſſed, and becauſe ſome touch had been given in the proclamation of the treaſons of *Ireland:* And chiefly becauſe Sir *Chriſtopher Blunt* was marſhal of the army in *Ireland*, and moſt inward with my Lord in all his proceedings there; and not ſo only, but farther in the confeſſion of *Thomas Lee*, it was preciſely contained, that he knew the Earl of *Eſſex* and *Tyrone*, and *Blunt* the marſhal, to be all one, and to run one courſe: it was thought fit to open ſome part of the treaſons of *Ireland*, ſuch as were then known. Which very happily gave the occaſion

ſion for *Blunt*, to make that diſcovery of the purpoſe to have invaded the realm with the army of *Ireland*: which he then offered, and afterwards uttered, and in the end ſealed with his blood, as is hereafter ſet down.

AGAINST *Cuffe* was given in evidence, both Sir *Charles Davers*'s confeſſion, who charged him when there was any debating of the ſeveral enterprizes which they ſhould undertake, that he did ever bind firmly and reſolutely for the court: and the accuſation under the Earl's hand, avouched by him to his face, that he was a principal inſtigator of him in his treaſons: but eſpecially a full declaration of Sir *Henry Nevil*'s, which deſcribeth and planteth forth the whole manner of his practiſing with him.

THE fellow, after he had made ſome introduction by an artificial and continued ſpeech, and ſome time ſpent in ſophiſtical arguments, deſcended to theſe two anſwers: the one, For his being within *Eſſex-houſe* that day, the day of the rebellion, they might as well charge a lion within a grate with treaſon, as him: And for the conſultation at *Drury-houſe*, it was no more treaſon than the child in the mother's belly is a child. But it was replied, that for his being in the houſe, it was not compulſory, and that there was a diſtribution in the action, of ſome to make good the houſe, and ſome to enter the city, and the one part held correſpondent to the other, and that in treaſons there were no acceſſaries, but all principals.

AND for the conſultation at *Drury-houſe*, it was a perfect treaſon in itſelf, becauſe the compaſſing of the King's deſtruction, which by judgment of law was concluded and implied in that conſultation, was treaſon, in the very thought and cogitation, ſo as that thought be proved by an overt act: And that the ſame conſultation and debating thereupon, was an overt act, though it had not been upon a liſt of names, and articles in writing, much more being upon matter in writing.

AND again, the going into the city was a purſuance and inducement of the enterprize to poſſeſs the court, and not a deſiſting or departure from it.

AND laſtly, it was ruled by the judges for law, That if many do conſpire to execute treaſon againſt the prince in one manner, and ſome of them do execute it in another manner, yet their act (though differing in the manner) is the act of all them that conſpire, by reaſon of the general malice of the intent.

AGAINST Sir *Gilly Merick*, the evidence that was given, charged him chiefly with the matter of the open rebellion, that he was as captain or commander over the houſe, and took upon him charge to keep it, and make it good as a place of retreat for thoſe which iſſued into the city, and fortifying and barricading the ſame houſe, and making proviſion of muſkets, powder, pellets and other munition and weapons for the holding and defending of it, and as a buſy, forward and noted actor in that defence and reſiſtance, which was made againſt the Queen's forces brought againſt it by her Majeſty's lieutenant.

AND farther to prove him privy to the plot, it was given in evidence, that ſome few days before the rebellion, with great heat and violence he had diſplaced certain gentlemen lodged in an houſe faſt by *Eſſex-houſe*, and there planted divers of my Lord's followers and complices, all ſuch as went forth with him in the action of rebellion.

THAT the afternoon before the rebellion, *Merick*, with a great company of others that afterwards were all in the action, had procured to be played before them, the play of depoſing King *Richard* the ſecond.

NEITHER was it caſual, but a play beſpoken by *Merick*.

AND

And not ſo only; but when it was told him by one of the players, that the play was old, and they ſhould have loſs in playing it, becauſe few would come to it: there was forty ſhillings extraordinary given to play it, and ſo thereupon played it was.

So earneſt he was to ſatisfy his eyes with the ſight of that tragedy, which he thought ſoon after his lord ſhould bring from the ſtage to the ſtate, but that God turned it upon their own heads.

The ſpeeches of Sir Chriſtopher Blunt *at his execution, are ſet down as near as they could be remembered, after the reſt of the confeſſions and evidences.*

Here follow the voluntary confeſſions themſelves, ſuch as were given in evidence at both the ſeveral arraignments, taken forth word for word out of the originals: Whereby it may appear how God brought matters to light, at ſeveral times, and in ſeveral parts, all concurring in ſubſtance: And with them, other declarations and parts of evidence.

The confeſſion of *Thomas Lee*, taken the 14th of *February*, 1600, before Sir *John Peyton* Lieutenant of the Tower, *Roger Wilbraham* Maſter of the requeſts, Sir *Anthony Saintleger* Maſter of the rolls in *Ireland*, and *Thomas Fleming* her Majeſty's Sollicitor General.

This examinate ſaith, that *Tyrone* ſent a meſſage to this examinate by *James Knowd* (whom this examinate by the Marſhal's warrant in writing had ſent to *Tyrone* before himſelf went to *Tyrone*) that if the Earl of *Eſſex* would follow his plot, he would make him the greateſt man that ever was in *England*, and that when *Eſſex* and *Tyrone* ſhould have conference together, for his aſſurance unto the Earl of *Eſſex*, *Tyrone* would deliver his eldeſt ſon in pledge to the Earl. And with this meſſage this examinate made the Earl of *Eſſex* acquainted before his coming to this examinate's houſe, at that time when this examinate was ſent to *Tyrone*.

This examinate ſaith, he knew that *Eſſex*, *Tyrone*, and the Marſhal Sir *Chriſtopher Blunt*, were all one, and held all one courſe.

Thomas Lee.

Exam. per *Joh. Peyton*, *Roger Wilbraham*, *Anthony Saintleger*, *Thomas Fleming*.

The declaration of Sir *William Warren*, 3 Octobris, 1599.

The Earl of *Eſſex* came the ſame day to the court in *England*.

The ſaid Sir *William* came to *Armagh* the laſt Friday, being the twenty-eighth of *September*: from thence he ſent a meſſenger in the night to *Tyrone* to *Dungannon*, ſignifying his coming to *Armagh*, as aforeſaid, and that the next morning he would meet *Tyrone* at the fort of *Blackwater*: where accordingly the ſaid *Tyrone* met with him; and after other ſpeeches by farther diſcourſe the ſaid *Tyrone* told the ſaid Sir *William*, and delivered it with an oath, that within theſe two months he ſhould ſee the greateſt alteration, and the ſtrangeſt, that he the ſaid Sir *William* could

imagine, or ever ſaw in his life: and ſaid that he hoped before it were long, that he the ſaid *Tyrone* ſhould have a good ſhare in *England:* Which ſpeeches of the alteration *Tyrone* reiterated two or three ſeveral times.

William Warren.

Certified from the council of *Ireland* to the lords of the council here.

The declaration of *Thomas Wood* 20 *Januarii*, 1599, taken before the Lord *Buckhurſt* Lord High Treaſurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Sir *J. Forteſcue* Chancellor of the Exchequer.

THE ſaid *Wood* ſaith, that happening to be with the Lord *Fitzmorris* baron of *Lickſnaw*, at his houſe of *Lickſnaw*, between Michaelmas and Alhallowtide laſt, the ſaid baron walking abroad with the ſaid *Wood*, aſked of him what force the Earl of *Eſſex* was of in *England*; he anſwered, he could not tell, but ſaid he was well beloved of the commonalty. Then ſaid the baron that the Earl was gone for *England*, and had diſcharged many of the companies of *Ireland*, and that it was agreed that he ſhould be king of *England*, and *Onele* to be viceroy of *Ireland*; and whenſoever he ſhould have occaſion, and would ſend for them, *Onele* ſhould ſend him eight thouſand men out of *Ireland*. The ſaid *Wood* aſked the baron, how he knew that? He anſwered, that the Earl of * *Deſmond* had written to him ſo much.

* The titulary Earl that is in rebellion.

Thomas Wood.

Confeſſed in the preſence of *Thomas Buckhurſt*, *Nottingham*, *Robert Cecil*, *John Forteſcue*.

The confeſſion of *James Knowd*, taken the ſixteenth of *February*, 1600, before Sir *Anthony Saintleger* Maſter of the rolls in *Ireland*, and *Roger Wilbraham* Maſter of the requeſts.

OWney *mac Rory* having ſecret intelligence of the friendſhip between the Earl of *Eſſex* and *Tyrone*, wrote to *Tyrone*, deſiring him to certify him thereof, whereby he might frame his courſe accordingly, and not do any thing contrary to their agreement: which letter myſelf did write by *Owney*'s appoinment (for then I was in credit with him;) in which letter he alſo deſired *Tyrone* to ſend him ſome munition. The letter, with inſtructions to that effect, was in my preſence delivered to one *Turlagh mac Davy o Kelly*, a man of ſecrecy, ſufficiency, and truſt with *Owney*; and he carried it to *Tyrone:* Before whoſe return *Owney* grew ſuſpicious of me, becauſe I ſometimes belonged to Mr. *Bowen*, and therefore they would not truſt me, ſo as I could not ſee the anſwer: but yet I heard by many of their ſecret council, that the effect thereof was, That the Earl of *Eſſex* ſhould be King of *England*, and *Tyrone* of *Ireland*.

AFTERWARDS I met with *Turlagh mac Davy*, the meſſenger aforeſaid, and aſked him whether he brought an anſwer of the letter from *Tyrone*. He ſaid he did, and delivered it to *Owney*. And then I aſked him what he thought of the wars. He told me he had good hope the laſt year, and had

had none this year: his reaſon was (as he ſaid) that the Earl of *Eſſex* was to take their part, and they ſhould aid him towards the conqueſt of *England*; and now they were hindered thereof by means of his apprehenſion.

I DWELLING with the taniſt of the country (my mother's couſin german) heard him ſpeak ſundry times, that now the Earl of *Eſſex* had gotten one of the ſwords, he would never forego his government until he became king of *England*, which was near at hand.

I SAW a letter which the Earl of *Eſſex* writ to *Owney*, to this effect; that if *Owney* came to him, he would ſpeak with him about that, which if he would follow, ſhould be happy for him and his country.

James Knowd.

Exam. per *Anthony Saintleger*, *Roger Wilbraham.*

The declaration of *David Hethrington*, an ancient captain and ſervitor in *Ireland*, 6 *January* 1599, taken before the Lord *Buckhurſt* Lord High Treaſurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Sir *John Forteſcue* Chancellor of the Exchequer.

HE the ſaid *David Hethrington* riding into the edge of the county of *Kildare*, about the end of the firſt ceſſation, fortuned to meet with one *James Occurren*, one of the horſemen of Maſter *Bowen* Provoſt Marſhal of *Lemſter*, who told him that the ſaid *James Occurren* meeting lately with a principal follower of *Owney mac Rory*, chief of the *Moores*, *Owney*'s man aſked him what news he heard of the Earl of *Eſſex*. To which *James Occurren* anſwered, that he was gone for *England:* whereunto he ſaid, Nay, if you can tell me no news, I can tell you ſome; the Earl of *Eſſex* is now in trouble for us, for that he would do no ſervice upon us; which he never meant to do, for he is ours, and we are his.

David Hethrington.

Confeſſed in the preſence of *Tho. Buckhurſt*, *Nottingham*, *Ro. Cecil*, *Jo. Forteſcue.*

The firſt confeſſion of Sir *Ferdinando Gorge*, Knight, the 16th of *February*, 1600, taken before Sir *Thomas Egerton* Lord Keeper of the great ſeal, the Lord *Buckhurſt* Lord High Treaſurer, the Earl of *Nottingham* Lord High Admiral, and Sir *Robert Cecil* principal Secretary.

HE ſaith the Earl of *Eſſex* wrote a letter to him in *January*, complaining of his misfortune: that he deſired his company, and deſired his repair up to him by the ſecond of *February*; that he came to town on *Saturday* ſeven-night before the Earl's inſurrection, and that the ſame night late he viſited the Earl: who, after complements, told him that he ſtood on his guard, and reſolved not to hazard any more commandments or reſtraints; that he deſired him to reſt him that night and to repair unto him again, but in ſuch ſort as it might not be noted.

THAT

THAT he had been with the Earl two or three times that week; and on *Saturday*, being the ſeventh of *February*, the Earl told him that he had been ſent for by the Lords, and refuſed to come: delivering farther, that he reſolved to defend himſelf from any more reſtraint.

HE farther ſaith, that it was in queſtion the ſame *Saturday* night to have ſtirred in the night, and to have attempted the court. But being demanded, whether the Earl could have had ſufficient company to have done any thing in the night: he anſwered, that all the Earl's company were ready at one hour's warning, and had been ſo before, in reſpect that he had meant long before to ſtand upon his guard.

THAT it was reſolved to have the court firſt attempted; that the Earl had three hundred gentlemen to do it; but that he the ſaid *Ferdinando Gorge* was a violent diſſuader of him from that purpoſe, and the Earl moſt confident in the party of *London*, which he meant (upon a later diſpute) firſt to aſſure; and that he was alſo aſſured of a party in *Wales*, but meant not to uſe them, until he had been poſſeſſed of the court.

THAT the Earl and Sir *Chriſtopher Blunt* underſtanding that Sir *Walter Raleigh* had ſent to ſpeak with him in the morning, the ſaid Sir *Chriſtopher Blunt* perſuaded him, either to ſurprize Sir *Walter Raleigh*, or to kill him. Which when he utterly refuſed, Sir *Chriſtopher Blunt* ſent four ſhot after him in a boat.

THAT at the going out of *Eſſex*-houſe gate, many cried out, To the court, to the court. But my Lord of *Eſſex* turned him about towards *London*.

THAT he meant, after poſſeſſion of the court, to call a parliament, and therein to proceed as cauſe ſhall require.

AT that time of the conſultation on *Saturday* night, my Lord was demanded what aſſurance he had of thoſe he made account to be his friends in the city? Whereunto he replied, that there was no queſtion to be made of that, for one, amongſt the reſt, that was preſently in one of the greateſt commands amongſt them, held himſelf to be intereſſed in the cauſe, (for ſo he phraſed it,) and was colonel of a thouſand men, which were ready at all times, beſides others that he held himſelf as aſſured of, as of him, and able to make as great numbers. Some of them had at that inſtant (as he reported to us) ſent unto him, taking notice of as much as he made us to know of the purpoſe intended to have intrapped him, and made requeſt to know his pleaſure.

Ferd. Gorge.

Exam. per *Th. Egerton*, C. S. *Tho. Buckhurſt*, *Nottingham*, *Ro. Cecil.*

The ſecond confeſſion of Sir *Ferdinando Gorge* the 18th of *February*, 1600, all written of his own hand; and acknowledged in the preſence of Sir *Thomas Egerton* Lord Keeper of the great ſeal, the Lord *Buckhurſt* Lord High Treaſurer, the Earl of *Nottingham* Lord High Admiral, and Sir *Robert Cecil* principal Secretary.

ON *Tueſday* before the inſurrection (as I remember) I was ſent unto by my Lord of *Eſſex*, praying me to meet my Lord of *Southampton*, Sir *Charles Davers*, Sir *John Davis*, and other his friends at *Drury*-houſe; where I ſhould ſee a ſchedule of his friends names, and projects to be diſputed upon. Whither

ther I came accordingly, and found the foreſaid Earl, Sir *Charles Davers*, Sir *John Davis*, and one Maſter *Littleton*. The names were ſhewed and numbered to be ſixſcore; earls, barons, knights, and gentlemen. The projects were theſe, whether to attempt the court, or the tower, or to ſtir his friends in *London* firſt, or whether both the court and tower at an inſtant? I diſliked that counſel. My reaſons were that I alledged to them, firſt, to attempt both with thoſe numbers, was not to be thought on, becauſe that was not ſufficient; and therefore adviſed them to think of ſomething elſe. Then they would needs reſolve to attempt the court, and withal deſired mine opinion. But I prayed them firſt to ſet down the manner how it might be done. Then Sir *John Davis* took ink and paper, and aſſigned to divers principal men their ſeveral places; ſome to keep the gate, ſome to be in the hall, ſome to be in the preſence, ſome in the lobby, ſome in the guard-chamber, others to come in with my Lord himſelf, who ſhould have had the paſſage given him to the privy-chamber, where he was to have preſented himſelf to her Majeſty.

Ferd. Gorge.

Knowledged in the preſence of *Tho. Egerton*, C. S.
Tho. Buckhurſt, *Nottingham*, *Ro. Cecil.*

The confeſſion of Sir *John Davis*, taken the 18th of *February* 1600, before the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and *John Herbert* ſecond Secretary of ſtate.

SIR *John Davis* being demanded, how long before my Lord of *Eſſex* tumult he knew of ſuch his purpoſe?

He anſwers, that he knew not directly of any meaning my Lord had, until the *Sunday* ſeven-night before, or thereabout.

Being demanded what he knew? Then he anſwered, that my Lord conſulted to poſſeſs himſelf of the court, at ſuch convenient time when he might find leaſt oppoſition. For executing of which enterprizes, and of other affairs, he appointed my Lord of *Southampton*, Sir *Charles Davers*, Sir *Ferdinando Gorge*, and himſelf, to meet at *Drury*-houſe, and there to conſider of the ſame, and ſuch other projects as his Lordſhip delivered them: And principally, for ſurprizing of the court, and for the taking of the tower of *London*. About which buſineſs they had two meetings, which were five or ſix days before the inſurrection.

He farther ſaith, that Sir *Chriſtopher Blunt* was not at this conſultation, but that he ſtayed and adviſed with my Lord himſelf about other things to him unknown: For that my Lord truſted ſeveral men in ſeveral buſineſſes, and not all together.

Being demanded what was reſolved in the opinions of theſe four before named? He ſaith, that Sir *Charles Davers* was appointed to the preſence-chamber, and himſelf to the hall: and that my Lord was to determine himſelf, who ſhould have guarded the court-gate, and the water-gate. And that Sir *Charles Davers*, upon a ſignal or a watch-word, ſhould have come out of the preſence into the guard-chamber; and then ſome out of the hall to have met him, and ſo have ſtept between the guard and their halberds; of which guard they hoped to have found but a dozen, or ſome ſuch ſmall number.

BEING aſked, whether he heard that ſuch as my Lord miſliked ſhould have received any violence? He ſaith, that my Lord avowed the contrary; and that my Lord ſaid, he would call them to an honourable trial, and not uſe the ſword.

BEING demanded whether my Lord thought his enemies to be *Spaniſh, bona fide*, or no? He ſaith, that he never heard any ſuch ſpeech; and if my Lord uſed any ſuch, it came into his head on the ſudden.

BEING demanded what party my Lord had in *London?* He ſaith, that the Sheriff *Smith* was his hope, as he thinketh.

BEING demanded whether my Lord promiſed liberty of catholick religion? He ſaith, that Sir *Chriſtopher Blunt* did give hope of it.

John Davis.

Exam. per *Nottingham, Ro. Cecil, J. Herbert.*

The confeſſion of Sir *Charles Davers*, taken the 18th of *February*, *anno* 1600, before Sir *Thomas Egerton* Lord Keeper of the great ſeal, the Lord *Buckhurſt* Lord High Treaſurer, the Earl of *Nottingham* the Lord High Admiral, Lord *Hunſdon* Lord Chamberlain, and Sir *Robert Cecil* principal Secretary.

HE confeſſeth that before *Chriſtmas* the Earl of *Eſſex* had bethought himſelf, how he might ſecure his acceſs unto the Queen in ſuch ſort, as he might not be reſiſted; but no reſolution determinately taken, until the coming up of this examinate a little after *Chriſtmas*.

AND then he doth confeſs, that the reſolution was taken to poſſeſs himſelf of the court; which reſolution was taken agreeable to certain articles, which the Earl of *Eſſex* did ſend to the Earl of *Southampton*, this examinate, Sir *Ferdinando Gorge*, and Sir *John Davis*, written with the Earl's own hand. To which conſultation (being held at *Drury*-houſe ſome four or five days before *Sunday*, that was the eighth of *February*) *Littleton* came in towards the end.

THE points which the Earl of *Eſſex* projected under his hand were theſe.

FIRST, whether it were fit to take the tower of *London*. The reaſon whereof was this; that after the court was poſſeſſed, it was neceſſary to give reputation to the action, by having ſuch a place to bridle the city, if there ſhould be any miſlike of their poſſeſſing the court.

To the poſſeſſing of the court, theſe circumſtances were conſidered.

FIRST, the Earl of *Eſſex* ſhould have aſſembled all the noblemen and gentlemen of quality on his party; out of which number he ſhould have choſen ſo many as ſhould have poſſeſſed all the places of the court, where there might have been any likelihood of reſiſtance: which being done, the Earl of *Eſſex*, with divers noblemen, ſhould have preſented himſelf to the Queen.

THE manner how it ſhould have been executed, was in this ſort: Sir *Chriſtopher Blunt* ſhould have had charge of the outer gate, as he thinketh. Sir *Charles Davers*, this examinate, with his company, ſhould have made good the preſence, and ſhould have ſeized upon the halberds of the guard. Sir *John Davis* ſhould have taken charge of the hall. All this being ſet, upon a ſignal given, the Earl ſhould have come into the court with his company.

BEING

BEING aſked what they would have done after? He ſaith, they would have ſent to have ſatisfied the city, and have called a parliament.

THESE were the reſolutions ſet down by the Earl of *Eſſex* of his own hand, after divers conſultations.

HE ſaith, *Cuffe* was ever of opinion, that the Earl of *Eſſex* ſhould come in this ſort to the court.

Charles Davers.

Exam. per *Th. Egerton*, C. S. *Tho. Buckhurſt*, *Nottingham*, *G. Hunſdon*, *Ro. Cecil.*

The ſecond confeſſion of Sir *Charles Davers*, taken the ſame day, and ſet down upon farther calling himſelf to remembrance, under his own hand, before Sir *Tho. Egerton* Lord Keeper of the great ſeal, Lord *Buckhurſt* Lord High Treaſurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary.

SOME points of the articles which my Lord of *Eſſex* ſent unto *Drury*-houſe (as near as I can remember) were theſe; whether both the court and the tower ſhould be both attempted at one time? if both, what numbers ſhould be thought requiſite for either? if the court alone, what places ſhould be firſt poſſeſſed? by what perſons?

AND for thoſe which were not to come into the court before-hand, where and in what ſort they might aſſemble themſelves, with leaſt ſuſpicion to come in with my Lord?

WHETHER it were not fit for my Lord, and ſome of the principal perſons, to be armed with privy coats?

Charles Davers.

Knowledged in the preſence of *Tho. Egerton*, C. S. *T. Buckhurſt*, *Nottingham*, *Robert Cecil.*

The firſt confeſſion of Sir *Chriſtopher Blunt* examined the 18th of *February*, 1600, before *Jo. Herbert* ſecond Secretary of eſtate, and in the preſence of *Nic. Kempe* counſellor at law, *William Waimarke*, *William Martin*, *Robert Andrews*, citizens, *John Trevor* ſurveyor of the navy, and *Thomas Thorney* his ſurgeon.

HE confeſſeth that the Earl of *Eſſex* ſent *Wiſeman*, about the 20th of *January*, to viſit his wife, with letters of complement, and to require him to come up unto him to *London*, to ſettle his eſtate according as he had written unto him before ſome few days.

BEING demanded to what end they went to the city, to join with ſuch ſtrength as they hoped for there; he confeſſeth, it was to ſecure the Earl of *Eſſex* his life, againſt ſuch forces as ſhould be ſent againſt him. And being aſked, what, againſt the Queen's forces? he anſwered, that muſt have been judged afterwards.

BUT

BUT being farther aſked, whether he did adviſe to come unto the court over night? He ſaith, no; for Sir *Ferdinando Gorge* did aſſure, that the alarm was taken of it at the court, and the guards doubled.

BEING aſked whether he thought any prince could have endured to have any ſubject make the city his mediator? or to gather force to ſpeak for him? He ſaith, he is not read in ſtories of former times; but he doth not know but that in former times ſubjects have uſed force for their mediation.

BEING aſked, what ſhould have been done by any of the perſons that ſhould have been removed from the Queen? He anſwered, that he never found my Lord diſpoſed to ſhed blood; but that any that ſhould have been found, ſhould have had indifferent trial.

BEING aſked upon his conſcience, whether the Earl of *Eſſex* did not give him comfort, that if he came to authority, there ſhould be a toleration for religion? He confeſſeth, he ſhould have been to blame to have denied it.

Chriſtopher Blunt.

This was read unto Sir *Chriſtopher Blunt*, and afterwards ſigned by him in the preſence of us who are under written.

Jo. Herbert, Nic. Kempe, Wil. Waimarke, Wil. Martin, Rob. Andrews, Jo. Trevor, Th. Thorney.

The ſecond confeſſion of Sir *Chriſtopher Blunt* the ſame day *viz.* the 18th of *February*; taken before Mr. *John Herbert* ſecond Secretary of eſtate, and ſubſcribed by him in the preſence of *Nicolas Kempe* Counſellor at law, *Thomas Thorney* his ſurgeon, and *William Martin*, *Robert Andrews*, and *Randolph Bull*, citizens.

This weakneſs was in reſpect of his hurt received in charging her Majeſty's forces at *Ludgate*.

SIR *Chriſtopher Blunt* (after the ſigning of this confeſſion) being told, that he did not deal plainly, excuſed himſelf by his former weakneſs, (putting us in mind that he ſaid once before, that when he was able to ſpeak, he would tell all truth) doth now confeſs; that four or five days before the Earl of *Eſſex* did riſe, he did ſet down certain articles to be conſidered on, which he ſaw not, until afterward he was made acquainted with them, when they had amongſt themſelves diſputed: which were theſe.

ONE of them was, whether the tower of *London* ſhould be taken?

ANOTHER, whether they ſhould not poſſeſs the court, and ſo ſecure my Lord, and other men to come to the Queen?

FOR the firſt concerning the tower, he did not like it; concluding, that he that had the power of the Queen, ſhould have that.

HE confeſſeth that upon *Saturday* night, when Mr. Secretary *Herbert* had been with the Earl, and that he ſaw ſome ſuſpicion was taken, he thought it in vain to attempt the court, and perſuaded him rather to ſave himſelf by flight, than to engage himſelf farther, and all his company. And ſo the reſolution of the Earl grew to go into the city, (in hope, as he ſaid before) to find many friends there.

He doth alſo ſay, that the Earl did uſually ſpeak of his purpoſe to alter the government.

Chriſtopher Blunt.

Exam. per *Jo. Herbert.*

Subſcribed in preſence of *Nic. Kempe*, *Tho. Thorney*, *Rob. Andrews*, *W. Martin*, *Randolph Bull.*

The Declaration of the Lord Keeper, the Earl of *Worceſter*, and the Lord Chief Juſtice of *England.*

Upon *Sunday*, being the eighth of *February* laſt paſt, about ten of the clock in the forenoon, the Lord Keeper of the Great Seal, the Earl of *Worceſter*, Sir *William Knolles* Comptroller of her Majeſty's houſhold, and the Lord Chief Juſtice of *England*, being commanded by direction from the Queen's Majeſty, did repair to the late Earl of *Eſſex* his houſe, and finding the gate ſhut againſt them, after a little ſtay they were let in at the wicket: And as ſoon as they were within the gate, the wicket was ſhut upon them, and all their ſervants kept out.

At their coming thither they found the court full of men aſſembled together in very tumultuous ſort; the Earls of *Eſſex*, *Rutland*, and *Southampton*, and the Lord *Sandys*, Maſter *Parker*, commonly called Lord *Montegle*, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and many other knights and gentlemen, and other perſons unknown, which flocked together about the Lord Keeper, *&c.* And thereupon the Lord Keeper told the Earl of *Eſſex*, that they were ſent from her Majeſty to underſtand the cauſe of this their aſſembly, and to let them know, that if they had any particular cauſe of grief againſt any perſons whatſoever, it ſhould be heard, and they ſhould have juſtice.

Hereupon the Earl of *Eſſex* with a very loud voice declared, that his life was ſought, and that he ſhould have been murdered in his bed; that he had been perfidiouſly dealt with; that his hand had been counterfeited, and letters written in his name; and that therefore they were aſſembled there together to defend their lives; with much other ſpeech to like effect. Hereupon the Lord Chief Juſtice ſaid unto the Earl, that if they had any ſuch matter of grief, or if any ſuch matter were attempted or purpoſed againſt him, he willed the Earl to declare it, aſſuring him that it ſhould be truly related to her Majeſty, and that it ſhould be indifferently heard, and juſtice ſhould be done whomſoever it concerned.

To this the Earl of *Southampton* objected the aſſault made upon him by the Lord *Gray*. Whereunto the Lord Chief Juſtice ſaid, that in his caſe juſtice had been done, and the party impriſoned for it. And hereupon the Lord Keeper did eftſoons will the Earl of *Eſſex*, that whatſoever private matter or offence he had againſt any perſon whatſoever, if he would deliver it unto them, they would faithfully and honeſtly deliver it to the Queen's Majeſty, and doubted not to procure him honourable and equal juſtice, whomſoever it concerned; requiring him, that if he would not declare it openly, that he would impart it unto them privately, and doubted not but they would ſatisfy him in it.

Upon this there was a great clamour raiſed amongſt the multitude, crying, away, my Lord, they abuſe you, they betray you, they undo you, you loſe time.

Whereupon the Lord Keeper put on his hat, and ſaid with a loud voice, My lord, let us ſpeak with you privately, and underſtand your griefs; and I command you all upon your allegiance, to lay down your weapons, and to depart, which you ought all to do, being thus commanded, if you be good ſubjects, and owe that duty to the Queen's Majeſty which you profeſs. Whereupon they all brake out into an exceeding loud ſhout and cry, crying, all, all, all.

And whilſt the Lord Keeper was ſpeaking, and commanding them upon their allegiance, as is before declared, the Earl of *Eſſex* and the moſt part of that company did put on their hats, and ſo the Earl of *Eſſex* went into the houſe, and the Lord Keeper, *&c.* followed him, thinking that his purpoſe had been to ſpeak with them privately, as they had required. And as they were going, ſome of that diſordered company cried, kill them. And as they were going into the great chamber, ſome cried, caſt the great ſeal out at the window. Some other cried there, kill them; and ſome other ſaid, nay, let us ſhop them up.

The Lord Keeper did often call to the Earl of *Eſſex* to ſpeak with them privately, thinking ſtill that his meaning had been ſo, until the Earl brought them into his back chamber, and there gave order to have the farther door of that chamber ſhut faſt. And at his going forth out of that chamber, the Lord keeper preſſing again to have ſpoken with the Earl of *Eſſex*, the Earl ſaid, My lords, be patient a while, and ſtay here, and I will go into *London*, and take order with the mayor and ſheriffs for the city, and will be here again within this half hour; and ſo departed from the Lord Keeper, *&c.* leaving the Lord Keeper, *&c.* and divers of the gentlemen penſioners in that chamber, guarded by Sir *John Davis*, *Francis Treſham*, and *Owen Salisbury*, with muſquet ſhot, where they continued until Sir *Ferdinando Gorge* came and delivered them about four of the clock in the afternoon.

In the mean time we did often require Sir *John Davis*, and *Francis Treſham*, to ſuffer us to depart, or at the leaſt, to ſuffer ſome one of us to go to the Queen's Majeſty, to inform her where and in what ſort we were kept. But they anſwered, that my lord (meaning the Earl of *Eſſex*) had commanded that we ſhould not depart before his return, which (they ſaid) would be very ſhortly.

Thomas Egerton, C. S. *Edward Worceſter*, *John Popham.*

The examination of *Roger* Earl of *Rutland*, the 12th of *February*, 1600. taken before Sir *Thomas Egerton* Lord Keeper of the great ſeal, the Lord *Buckhurſt* Lord High Treaſurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Sir *Jo. Popham* Lord Chief Juſtice of *England.*

He ſaith, that at his coming to *Eſſex*-houſe on *Sunday* morning laſt, he found there with the Earl of *Eſſex*, the Lord *Sandys*, and the Lord *Chandos*, and divers knights and gentlemen. And the Earl of *Eſſex* told this examinate, that his life was practiſed to be taken away by the Lord *Cobham*, and Sir *Walter Raleigh*, when he was ſent for to the counſel. And the Earl ſaid, that now he meant by the help of his friends to defend himſelf: And ſaith, that the detaining of the Lord Keeper and the other lords ſent to the Earl from the Queen, was a ſtratagem of war: And ſaith, that the Earl of *Eſſex* told him that *London* ſtood for him, and that Sheriff *Smith* had given him intelligence, that he would make as many men to aſſiſt him as he could.

And

And farther the Earl of *Eſſex* ſaid, that he meant to poſſeſs himſelf of the city, the better to enable himſelf to revenge him on his enemies, the Lord *Cobham*, Sir *Robert Cecil*, and Sir *Walter Raleigh*. And this examinate confeſſeth, that he reſolved to live and die with the Earl of *Eſſex*; and that the Earl of *Eſſex* did intend to make his forces ſo ſtrong, that her Majeſty ſhould not be able to reſiſt him in the revenge of his enemies. And ſaith, that the Earl of *Eſſex* was moſt inward with the Earl of *Southampton*, Sir *Chriſtopher Blunt*, and others; who have of long time ſhewed themſelves diſcontented, and have adviſed the Earl of *Eſſex* to take other courſes, and to ſtand upon his guard: And ſaith, that when the Earl of *Eſſex* was talking with the Lord Keeper, and other the lords ſent from her Majeſty, divers ſaid, My Lord, they mean to abuſe you, and you loſe time. And when the Earl came to Sheriff *Smith*'s, he deſired him to ſend for the lord mayor that he might ſpeak with him. And as the Earl went in the ſtreets of *London*, this examinate ſaid to divers of the citizens, that if they would needs come, that it was better for their ſafety to come with weapons in their hands: And ſaith, that the Earl of *Eſſex* (at the end of the ſtreet where Sheriff *Smith* dwelt) cried out to the citizens, that they did him harm, for that they came naked; and willed them to get them weapons: And the Earl of *Eſſex* alſo cried out to the citizens, that the crown of *England* was offered to be ſold to the *Infanta:* And ſaith, that the Earl burned divers papers that were in a little casket, whereof one was, as the Earl ſaid, an hiſtory of his troubles: And ſaith, that when they were aſſaulted in *Eſſex* houſe, after their return, they firſt reſolved to have made a ſally out. And the Earl ſaid, that he was determined to die; and yet in the end they changed their opinion and yielded: And ſaith, that the Earl of *Southampton*, Sir *Chriſtopher Blunt*, and Sir *John Davis*, adviſed the Earl of *Eſſex*, that the Lord Keeper and his company ſhould be detained: And this examinate ſaith, that he heard divers there preſent cry out, kill them, kill them: And ſaith, that he thinketh the Earl of *Eſſex* intended, that after he had poſſeſſed himſelf of the city, he would intreat the Lord Keeper and his company to accompany him to the court. He ſaith, he heard Sir *Chriſtopher Blunt* ſay openly, in the preſence of the Earl of *Eſſex* and others, how fearful, and in what ſeveral humours they ſhould find them at the court, when they came thither.

Rutland.

Exam. per *Th. Egerton*, C. S. *T. Buckhurſt*, *Nottingham*, *Ro. Cecil*, *Jo. Popham.*

The confeſſion of *William* Lord *Sandys*, of the pariſh of *Sherborne-Cowdry* in the county of *Southampton*, taken this 16th of *February*, 1600. before Sir *John Popham* Lord Chief Juſtice, *Roger Wilbraham* Maſter of the requeſts, and *Edw. Coke* her Majeſty's Attorney-general.

HE ſaith, that he never underſtood that the Earl did mean to ſtand upon his ſtrength till *Sunday* in the morning, being the eighth of this inſtant *February:* And ſaith, that in the morning of that day this examinate was ſent for by the Earl of *Eſſex* about ſix or ſeven of the clock; and the Earl ſent for him by his ſervant *Warburton*, who was married to a widow in *Hampſhire*. And at his coming to the Earl there were ſix or ſeven gentlemen with him,

him, but remembereth not what they were; and next after, of a nobleman, came my Lord *Chandos*, and after him came the Earl of *Southampton*, and presently after the Earl of *Rutland*, and after him Master *Parker*, commonly called the Lord *Montegle*: And saith, that at his coming to the Earl of *Essex*, he complained that it was practised by Sir *Walter Raleigh* to have murdered him as he should have gone to the Lord Treasurer's house with Master Secretary *Herbert*. And saith, that he was present in the court-yard of *Essex*-house, when the Lord Keeper, the Earl of *Worcester*, Sir *William Knolles*, and the Lord Chief Justice, came from the Queen's Majesty to the Earl of *Essex*. And the Lord Chief Justice required the Earl of *Essex* to have some private conference with him; and that if any private wrongs were offered unto him, that they would make true report thereof to her Majesty, who, no doubt, would reform the same: And saith, that this examinate went with the Earl, and the rest of his company, to *London* to Sheriff *Smith*'s, but went not into the house with him, but stayed in the street a while; and being sent for by the Earl of *Essex*, went into the house, and from thence came with him till he came to *Ludgate*; which place being guarded, and resistance being made, and perceived by the Earl of *Essex*, he said unto his company, charge; and thereupon Sir *Christopher Blunt*, and others of his company gave the charge, and being repulsed, and this examinate hurt in the leg, the Earl retired with this examinate and others to his house called *Essex*-house. And on his retire, the Earl said to this examinate, that if Sheriff *Smith* did not his part, that his part was as far forth as the Earl's own, which moved him to think that he trusted to the city. And when the Earl was, after his retire, in *Essex*-house, he took an iron casket, and broke it open, and burnt divers papers in it; whereof there was a book, as he taketh it, and said, as he was burning of them, that they should tell no tales to hurt his friends: And saith, that the Earl said, that he had a black bag about his neck that should tell no tales.

William Sandys.

Exam. per *Jo. Popham, Roger Wilbraham, Edw. Coke.*

The examination of the Lord *Cromwell*, taken the 7th of *March*, 1600, by Sir *J. Popham* Lord Chief Justice, *Christ. Yelverton* her Majesty's serjeant, and *Fr. Bacon* of her Majesty's learned counsel.

* AT the Sheriff's house this examinate pressed in with the rest, and found the Earls shifting themselves in an inner chamber, where he heard my Lord of *Essex* certify the company, that he had been advertised out of *Ireland* (which he would not now hide from them) that the realm should be delivered over to the hands of the *Infanta* of *Spain*, and that he was wished to look to it. Farther, that he was to seek redress for injuries; and that he had left at his house for pledges, the Lord Keeper, the Earl of *Worcester*, Sir *William Knolles*, and the Lord Chief Justice.

Edw. Cromwell.

Exam. per *Jo. Popham, Chr. Yelverton, Fr. Bacon.*

* This examination, as appeareth by the date, was taken after *Essex* arraignment, but is inserted, to shew how the speech, of the realm to be sold to the *Infanta*, which at his arraignment he derived from Mr. Secretary, at Sheriff *Smith*'s house he said was advertised out of *Ireland:* And with this latter concur many other examinations.

Sir

Sir *Chriſtopher Blunt* knight, at the time of his arraignment, did openly at the bar deſire to ſpeak with the Lord Admiral and Mr. Secretary; before whom he made this confeſſion following; which the Earl of *Southampton* confirmed afterwards, and he himſelf likewiſe at his death.

HE confeſſeth, that at the caſtle of *Dublin*, in that lodging which was once the Earl of *Southampton*'s, the Earl of *Eſſex* purpoſing his return into *England*, adviſed with the Earl of *Southampton* and himſelf, of his beſt manner of going into *England* for his Security, ſeeing to go he was reſolved.

AT that time he propounded his going with a competent number of ſoldiers, to the number of two or three thouſand, to have made good his firſt landing with that force, until he could have drawn unto himſelf a ſufficient ſtrength to have proceeded farther.

FROM this purpoſe this examinate did uſe all forcible perſuaſions; alledging not only his own ruin, which ſhould follow thereof, and all thoſe which ſhould adhere to him in that action; but urging it to him as a matter moſt foul, becauſe he was not only held a patron of his country, which by this means he ſhould have deſtroyed; but alſo ſhould have laid upon himſelf an irrevocable blot, having been ſo deeply bound to her Majeſty. To which diſſuaſion the Earl of *Southampton* alſo inclined.

THIS deſign being thus diſſuaded by them, then they fell to a ſecond conſideration: and therein this examinate confeſſeth, that he rather adviſed him, if needs he would go, to take with him ſome competent number of choice men.

HE did not name unto him any particular power that would have come to him at his landing, but aſſured himſelf that his army would have been quickly increaſed by all ſorts of diſcontented people.

HE did confeſs before his going, that he was aſſured that many of the rebels would be adviſed by him, but named none in particular.

The examination of the Earl of *Southampton* after his arraignment; taken before the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Mr. *John Herbert* ſecond Secretary of eſtate.

SIR *Chriſtopher Blunt* being hurt, and lying in the caſtle of *Dublin*, in a chamber which had been mine, the Earl of *Eſſex* one day took me thither with him, where being none but we three, he told us, he found it neceſſary for him to go into *England*, and thought it fit to carry with him as much of the army as he could conveniently tranſport, to go on ſhore with him to *Wales*, and there to make good his landing with thoſe, till he could ſend for more; not doubting but his army would ſo increaſe in a ſmall time, that he ſhould be able to march to *London*, and make his conditions as he deſired.

TO which project I anſwered, that I held it altogether unfit, as well in reſpect of his conſcience to God, and his love to his country, as his duty to

his Sovereign, of which he (of all men) ought to have greateſt regard, ſeeing her Majeſty's favours to him had been ſo extraordinary: Wherefore I could never give any conſent unto it. Sir *Chriſtopher Blunt* joined with me in this opinion.

Exam. per *Nottingham*, *Ro. Cecil*, *J. Herbert*.

The Speech of Sir *Chriſtopher Blunt*, at the time of his death, as near as it could be remembered, *March* 18, 1600.

MY Lords, and you that be preſent, although I muſt confeſs, that it were better fitting the little time I have to breathe, to beſtow the ſame in asking God forgiveneſs for my manifold and abominable ſins, than to uſe any other diſcourſe, eſpecially having both an imperfection of ſpeech, and, God knows, a weak memory, by reaſon of my late grievous wound: Yet to ſatisfy all thoſe that are preſent, what courſe hath been held by me in this late enterprize, becauſe I was ſaid to be an inſtigator and ſetter on of the late Earl, I will truly, and upon the peril of my ſoul, ſpeak the truth.

IT is true, that the firſt time that ever I underſtood of any dangerous diſcontentment in my Lord of *Eſſex*, was about three years ago at *Wanſted*, upon his coming one day from *Greenwich*. At that time he ſpake many things unto me, but deſcended into no particulars, but in general terms.

AFTER which time, he never brake with me in any matter tending to the alteration of the ſtate, (I proteſt before God) until he came into *Ireland*, other than I might conceive, that he was of an ambitious and diſcontented mind. But when I lay at the caſtle of *Thomas Lee*, called *Relan*, in *Ireland*, grievouſly hurt, and doubted of my life, he came to viſit me, and then began to acquaint me with his intent.

AS he thus ſpake, the Sheriff began to interrupt him, and told him the hour was paſt. But my Lord *Gray*, and Sir *Walter Raleigh* captain of the guard, called to the Sheriff, and required him not to interrupt him, but to ſuffer him quietly to finiſh his prayers and confeſſions. Sir *Chriſtopher Blunt* ſaid, Is Sir *Walter Raleigh* there? Thoſe on the ſcaffold anſwered, Yea. To whom Sir *Chriſtopher Blunt* ſpake on this manner:

SIR *Walter Raleigh*, I thank God that you are preſent: I had an infinite deſire to ſpeak with you, to ask you forgiveneſs ere I died, both for the wrong done you, and for my particular ill intent towards you: I beſeech you forgive me. Sir *Walter Raleigh* anſwered, that he moſt willingly forgave him, and beſought God to forgive him, and to give him his divine comfort: proteſting before the Lord, that whatſoever Sir *Chriſtopher Blunt* meant towards him, for his part he never had any ill intent towards him: And farther ſaid to Sir *Chriſtopher Blunt*, I pray you without offence let me put you in mind that you have been eſteemed, not only a principal provoker and perſuader of the Earl of *Eſſex* in all his undutiful courſes, but eſpecially an adviſer in that which hath been confeſſed of his purpoſe to tranſport a great part of her Majeſty's army out of *Ireland* into *England*, to land at *Milford*, and thence to turn it againſt her ſacred perſon. You ſhall do well to tell the truth, and to ſatisfy the world. To which he anſwered thus:

SIR, if you will give me patience, I will deliver a truth, ſpeaking now my laſt, in the preſence of God, in whoſe mercy I truſt. And then he directed himſelf to my Lord *Gray* and my Lord *Compton*, and the reſt that ſate on horſeback near the ſcaffold.

WHEN

When I was brought from *Roban* to *Dublin*, and lodged in the caſtle, his lordſhip and the Earl of *Southampton* came to viſit me; and to be ſhort, he began thus plainly with me: That he intended to tranſport a choice part of the army of *Ireland* into *England*, and land them in *Wales*, at *Milford* or thereabouts; and ſo ſecuring his deſcent, thereby would gather ſuch other forces as might enable him to march to *London*. To which, I proteſt, before the Lord God, I made this or the like anſwer: That I would that night conſider of it; which I did.

And the next day the Earls came again: I told them, that ſuch an enterprize, as it was moſt dangerous, ſo would it coſt much blood, as I could not like of it; beſides many hazards, which at this time I cannot remember unto you, neither will the time permit it. But I rather adviſed him to go over himſelf with a good train, and make ſure of the court, and then make his own conditions.

And although it be true, that (as we all proteſted in our examinations and arraignments) we never reſolved of doing hurt to her Majeſty's perſon, (for in none of our conſultations was there ſet down any ſuch purpoſe;) yet, I know, and muſt confeſs, if we had failed of our ends, we ſhould (rather than have been diſappointed) even have drawn blood from herſelf. From henceforward, he dealt no more with me herein, until he was diſcharged of his keeper at *Eſſex-houſe*. And then, he again asked mine advice, and diſputed the matter with me; but reſolved not. I went then into the country, and before he ſent for me (which was ſome ten days before his rebellion) I never heard more of the matter. And then he wrote unto me to come up, upon pretence of making ſome aſſurances of land, and the like. I will leave the reſt unto my confeſſions, given to that honourable Lord Admiral, and worthy Mr. Secretary, (to whom I beſeech you Sir *Walter Raleigh* commend me;) I can requite their favourable and charitable dealing with me, with nought elſe but my prayers for them. And I beſeech God of his mercy, to ſave and preſerve the Queen, who hath given comfort to my ſoul, in that I hear ſhe hath forgiven me all, but the ſentence of the law, which I moſt worthily deſerved, and do moſt willingly embrace; and hope that God will have mercy and compaſſion on me, who have offended him as many ways as ever ſinful wretch did. I have led a life ſo far from his precepts, as no ſinner more. God forgive it me, and forgive me my wicked thoughts, my licentious life, and this right arm of mine, (which I fear me) hath drawn blood in this laſt action. And I beſeech you all bear witneſs, that I die a Catholick, yet ſo, as I hope to be ſaved only by the death and paſſion of Chriſt, and by his merits, not aſcribing any thing to mine own works. And I truſt you are all good people, and your prayers may profit me. Farewell my worthy Lord *Gray* and my Lord *Compton*, and to you all, God ſend you both to live long in honour. I will deſire to ſay a few prayers, and embrace my death moſt willingly. With that he turned from the rail towards the executioner; and the miniſter offering to ſpeak with him, he came again to the rail, and beſought that his conſcience might not be troubled, for he was reſolved; which he deſired for God's ſake. Whereupon commandment was given, that the miniſter ſhould not interrupt him any farther. After which he prepared himſelf to the block, and ſo died very manfully and reſolutely.

An

An abſtract out of the Earl of *Eſſex*'s confeſſion under his own hand.

UPON *Saturday* the twenty-firſt of *February*, after the late Earl of *Eſſex* had deſired us to come to him, as well to deliver his knowledge of thoſe treaſons, which he had formerly denied at the bar, as alſo to recommend his humble and earneſt requeſt, that her Majeſty would be pleaſed (out of her grace and favour) to ſuffer him to die privately in the tower; he did marvellous earneſtly deſire, that he would ſuffer him to ſpeak unto *Cuffe* his Secretary: againſt whom he vehemently complained unto us, to have been a principal inſtigator to theſe violent courſes which he had undertaken. Wherein he proteſted, that he chiefly deſired that he might make it appear that he was not the only perſuader of theſe great offences which they had committed; but that *Blunt*, *Cuffe*, *Temple*, beſides thoſe other perſons who were at the private conſpiracy at *Drury-houſe* (to which, though theſe three were not called, yet they were privy) had moſt malicious and bloody purpoſes to ſubvert the ſtate and government: Which could not have been prevented, if his project had gone forward.

THIS requeſt being granted him, and *Cuffe* brought before him, he there directly and vehemently charged him; And amongſt other ſpeeches uſed theſe words: *Henry Cuffe*, call to God for mercy, and to the Queen, and deſerve it by declaring truth. For I, that muſt now prepare for another world, have reſolved to deal clearly with God and the world: and muſt needs ſay this to you; You have been one of the chiefeſt inſtigators of me to all theſe my diſloyal courſes into which I have fallen.

Teſtified by *Tho. Egerton*, C. S. *Tho. Buckhurſt*, *Nottingham*, *Ro. Cecil.*

The Earl of *Eſſex* his confeſſion to three miniſters, whoſe names are under-written, the 25th of *February*, 1600.

THE late Earl of *Eſſex* thanked God moſt heartily, That he had given him a deeper inſight into his offence, being ſorry he had ſo ſtood upon his juſtification at his arraignment, for he was ſince that become another man.

HE thanked God that his courſe was ſo prevented; for if his project had taken effect, God knows (ſaid he) what harm it had wrought in the realm.

HE humbly thanked her Majeſty, that he ſhould die in ſo private a manner, leſt the acclamation of the people might have been a temptation unto him. To which he added, that all popularity and truſt in man was vain: the experience whereof himſelf had felt.

HE acknowledged with thankfulneſs to God, that he was thus juſtly ſpewed out of the realm.

HE publickly in his prayer and proteſtation, as alſo privately, aggravated the deteſtation of his offence; and eſpecially in the hearing of them that were preſent at the execution, he exaggerated it with four epithets, deſiring God to forgive him his great, his bloody, his crying, and his infectious ſin: which word *infectious* he privately had explained to us, that it was a leproſy that had infected far and near.

Thomas Montford, *William Barlow*, *Abdy Aſhton* his chaplain.

THE

THE

APOLOGY

OF

Sir *FRANCIS BACON*,

In certain Imputations concerning the late EARL of *ESSEX*.

To the Right Honourable his very good Lord the EARL of DEVONSHIRE, Lord Lieutenant of IRELAND.

IT may pleaſe your good Lordſhip, I cannot be ignorant, and ought to be ſenſible of the wrong which I ſuſtain in common ſpeech, as if I had been falſe or unthankful to that noble, but unfortunate Earl, the Earl of *Eſſex*: and for ſatisfying the vulgar ſort, I do not ſo much regard it; though I love a good name, but yet as an handmaid, and attendant of honeſty and virtue. For I am of his opinion that ſaid pleaſantly, that it was a ſhame to him that was a ſuitor to the miſtreſs, to make love to the waiting-woman; and therefore to woo or court common fame otherwiſe than it followeth on honeſt courſes, I, for my part, find not my ſelf fit or diſpoſed. But on the other ſide, there is no worldly thing that concerneth my ſelf which I hold more dear than the good opinion of certain perſons; among which there is none I would more willingly give ſatisfaction unto, than to your Lordſhip. Firſt, becauſe you loved my Lord of *Eſſex*, and therefore will not be partial towards me, which is part of that I deſire: next, becauſe it hath ever pleaſed you to ſhew your ſelf to me an honourable friend, and ſo no baſeneſs in me to ſeek to ſatisfy you: And laſtly, becauſe I know your Lordſhip is excellently grounded in the true rules and habits of duties and moralities, which muſt be they which ſhall decide this matter; wherein, my Lord, my defence needeth to be but ſimple and brief: namely, that whatſoever I did concerning that action and proceeding, was done in my duty and ſervice to the Queen and the ſtate; in which I would not ſhew my ſelf falſe-hearted, nor faint-hearted, for any man's ſake living. For every honeſt man that hath his heart well planted, will forſake his King rather than forſake God, and forſake his friend rather than forſake his King; and yet will forſake any earthly commodity, yea, and his own life in ſome caſes, rather than forſake his friend. I hope the world hath not forgotten theſe degrees, elſe the heathen ſaying, *amicus uſque ad aras*, ſhall judge them.

AND if any man ſhall ſay, I did officiouſly intrude my ſelf into that buſineſs, becauſe I had no ordinary place; the like may be ſaid of all the buſineſs in effect that paſſed the hands of the learned counſel, either of ſtate or re-

venues theſe many years, wherein I was continually uſed. For, as your Lordſhip may remember, the Queen knew her ſtrength ſo well, as ſhe looked her word ſhould be a warrant; and after the manner of the choiceſt princes before her, did not always tye her truſt to place, but did ſometime divide private favour from office. And I for my part, though I was not ſo unſeen in the world, but I knew the condition was ſubject to envy and peril; yet becauſe I knew again ſhe was conſtant in her favours, and made an end where ſhe began; and eſpecially, becauſe ſhe upheld me with extraordinary acceſs, and other demonſtrations of confidence and grace, I reſolved to endure it in expectation of better. But my ſcope and deſire is, that your Lordſhip would be pleaſed to have the honourable patience to know the truth, in ſome particularity, of all that paſſed in this cauſe, wherein I had any part, that you may perceive how honeſt a heart I ever bear to my Sovereign, and to my country, and to that noble man, who had ſo well deſerved of me, and ſo well accepted of my deſervings, whoſe fortune I cannot remember without much grief. But for any action of mine towards him, there is nothing that paſſed me in my life-time, that cometh to my remembrance with more clearneſs, and leſs check of conſcience: for it will appear to your Lordſhip, that I was not only not oppoſite to my Lord of *Eſſex*, but that I did occupy the utmoſt of my wits, and adventure my fortune with the Queen to have reintegrated his, and ſo continued faithfully and induſtriouſly, till his laſt fatal impatience, (for ſo I will call it) after which day there was not time to work for him; though the ſame, my affection, when it could not work on the ſubject proper, went to the next, with no ill effect towards ſome others, who, I think, do rather not know it, than not acknowledge it. And this I will aſſure your Lordſhip, I will leave nothing untold, that is truth, for any enemy that I have, to add; and on the other ſide, I muſt reſerve much which makes for me, in many reſpects of duty, which I eſteem above my credit: and what I have here ſet down to your Lordſhip, I proteſt, as I hope to have any part in God's favour, is true.

It is well known, how I did many years ſince dedicate my travels and ſtudies to the uſe and (as I may term it) ſervice of my Lord of *Eſſex*, which I proteſt before God I did not, making election of him as the likelieſt mean of mine own advancement, but out of the humour of a man that ever, from the time I had any uſe of reaſon, (whether it were reading upon good books, or upon the example of a good father, or by nature) I loved my country more than was anſwerable to my fortune; and I held at that time my Lord to be the fitteſt inſtrument to do good to the ſtate, and therefore I applied my ſelf to him in a manner which I think happeneth rarely among men: for I did not only labour carefully and induſtriouſly in that he ſet me about, whether it were matter of advice or otherwiſe, but neglecting the Queen's ſervice, mine own fortune, and in a ſort my vocation, I did nothing but adviſe and ruminate with my ſelf to the beſt of my underſtanding, propoſitions and memorials of any thing that might concern his Lordſhip's honour, fortune, or ſervice. And when not long after I entered into this courſe, my brother Mr. *Anthony Bacon* came from beyond the ſeas, being a gentleman whoſe ability the world taketh knowledge of for matters of ſtate, eſpecially foreign, I did likewiſe knit his ſervice to be at my Lord's diſpoſing. And on the other ſide, I muſt and will ever acknowledge my Lord's love, truſt and favour towards me; and laſt of all his liberality, having infeoffed me of land which I ſold for eighteen hundred pounds to Maſter *Reynold Nicholas*, which, I think, was more worth; and that at ſuch a time, and with ſo kind and noble circum-

ſtances, as the manner was as much as the matter; which, though it be but an idle digreſſion, yet becauſe I am not willing to be ſhort in commemoration of his benefits, I will preſume to trouble your Lordſhip with relating to you the manner of it. After the Queen had denied me the Sollicitor's place, for the which his Lordſhip had been a long and earneſt ſuitor on my behalf, it pleaſed him to come to me from *Richmond* to *Twicknam Park*, and brake with me, and ſaid: Mr. *Bacon*, the Queen hath denied me the place for you, and hath placed another; I know you are the leaſt part of your own matter, but you fare ill becauſe you have choſen me for your mean and dependence: you have ſpent your time and thoughts in my matters; I die (theſe were his very words) if I do not ſomewhat towards your fortune, you ſhall not deny to accept a piece of land which I will beſtow upon you. My anſwer, I remember, was, that for my fortune it was no great matter; but that his Lordſhip's offer made me call to mind what was wont to be ſaid, when I was *France*, of the Duke of *Guiſe*, that he was the greateſt uſurer in *France*, becauſe he had turned all his eſtate into obligations; meaning that he had left himſelf nothing, but only had bound numbers of perſons to him. Now, my Lord, ſaid I, I would not have you imitate his courſe, nor turn your ſtate thus by great gifts into obligations, for you will find many bad debtors. He bad me take no care for that, and preſſed it: whereupon I ſaid, My Lord, I ſee I muſt be your homager, and hold land of your gift; but do you know the manner of doing homage in law? Always it is with a ſaving of his faith to the King and his other Lords; and therefore, my Lord, ſaid I, I can be no more yours than I was, and it muſt be with the ancient ſavings; and if I grow to be a rich man, you will give me leave to give it back again to ſome of your unrewarded followers. But to return; ſure I am (though I can arrogate nothing to my ſelf but that I was a faithful remembrancer to his Lordſhip) that while I had moſt credit with him his fortune went on beſt: And yet in two main points we always directly and contradictorily differed, which I will mention to your Lordſhip, becauſe it giveth light to all that followed. The one was, I ever ſet this down, that the only courſe to be held with the Queen, was by obſequiouſneſs and obſervance; and I remember I would uſually engage confidently, that if he would take that courſe conſtantly, and with choice of good particulars to expreſs it, the Queen would be brought in time to *Ahaſuerus*'s queſtion, to aſk, What ſhould be done to the man that the King would honour? Meaning, that her goodneſs was without limit, where there was a true concurrence, which I knew in her nature to be true. My Lord, on the other ſide, had a ſettled opinion, that the Queen could be brought to nothing but by a kind of neceſſity and authority; and I well remember, when by violent courſes at any time he had got his will, he would aſk me, Now, Sir, whoſe principles be true? And I would again ſay to him; My Lord, theſe courſes be like to hot waters, they will help at a pang; but if you uſe them you ſhall ſpoil the ſtomach, and you ſhall be fain ſtill to make them ſtronger and ſtronger, and yet in the end they will leſſen their operation; with much other variety, wherewith I uſed to touch that ſtring. Another point was, that I always vehemently diſſuaded him from ſeeking greatneſs by a military dependence, or by a popular dependence, as that which would breed in the Queen jealouſy, in himſelf preſumption, and in the ſtate perturbation: and I did uſually compare them to *Icarus*'s two wings, which were joined on with wax, and would make him venture to ſoar too high, and then fail him at the height. And I would farther ſay unto him; My Lord, ſtand upon two feet, and fly not upon two wings:

wings: the two feet are the two kinds of juſtice, commutative and diſtributive: uſe your greatneſs for advancing of merit and virtue, and relieving wrongs and burdens; you ſhall need no other art or fineſſe: but he would tell me, that opinion came not from my mind, but from my robe. But it is very true, that I that never meant to inthral my ſelf to my Lord of *Eſſex*, nor any other man, more than ſtood with the publick good, did (though I could little prevail) divert him by all means poſſible from courſes of the wars and popularity: for I ſaw plainly the Queen muſt either live or die; if ſhe lived, then the times would be as in the declination of an old prince; if ſhe died, the times would be as in the beginning of a new; and that if his Lordſhip did riſe too faſt in theſe courſes, the times might be dangerous for him, and he for them. Nay, I remember, I was thus plain with him upon his voyage to the iſlands, when I ſaw every ſpring put forth ſuch actions of charge and provocation, that I ſaid to him, My Lord, when I came firſt unto you, I took you for a phyſician that deſired to cure the diſeaſes of the ſtate, but now I doubt you will be like thoſe phyſicians which can be content to keep their patients low, becauſe they would always be in requeſt. Which plainneſs he nevertheleſs took very well, as he had an excellent ear, and was *patientiſſimus veri*, and aſſured me the caſe of the realm required it: and I think this ſpeech of mine, and the like renewed afterwards, pricked him to write that apology which is in many mens hands.

But this difference in two points ſo main and material, bred in proceſs of time a diſcontinuance of privateneſs (as it is the manner of men ſeldom to communicate where they think their courſes not approved) between his Lordſhip and my ſelf; ſo as I was not called nor adviſed with for ſome year and a half before his Lordſhip's going into *Ireland*, as in former time: yet nevertheleſs, touching his going into *Ireland*, it pleaſed him expreſly, and in a ſet manner, to deſire mine opinion and counſel. At which time I did not only diſſuade, but proteſt againſt his going, telling him with as much vehemency and aſſeveration as I could, that abſence in that kind would exulcerate the Queen's mind, whereby it would not be poſſible for him to carry himſelf ſo, as to give her ſufficient contentment; nor for her to carry her ſelf ſo, as to give him ſufficient countenance; which would be ill for her, ill for him, and ill for the ſtate. And becauſe I would omit no argument, I remember I ſtood alſo upon the difficulty of the action; ſetting before him out of hiſtories, that the *Iriſh* was ſuch an enemy as the ancient *Gauls*, or *Britons*, or *Germans* were; and that we ſaw how the *Romans*, who had ſuch diſcipline to govern their ſoldiers, and ſuch donatives to encourage them, and the whole world in a manner to levy them; yet when they came to deal with enemies, which placed their felicity only in liberty, and the ſharpneſs of their ſword, and had the natural elemental advantages of woods, and bogs, and hardneſs of bodies, they ever found they had their hands full of them; and therefore concluded, that going over with ſuch expectation as he did, and through the churliſhneſs of the enterprize not like to anſwer it, would mightily diminiſh his reputation; and many other reaſons I uſed, ſo as I am ſure I never in any thing in my life-time dealt with him in like earneſtneſs by ſpeech, by writing, and by all the means I could deviſe. For I did as plainly ſee his overthrow chained, as it were by deſtiny, to that journey, as it is poſſible for any man to ground a judgment upon future contingents. But, my Lord, howſoever his ear was open, yet his heart and reſolution was ſhut againſt that advice, whereby his ruin might have been prevented. After my Lord's going, I ſaw then how true a prophet I

was,

was, in regard of the evident alteration which naturally ſucceeded in the Queen's mind; and thereupon I was ſtill in watch to find the beſt occaſion that in the weakneſs of my power I could either take or miniſter, to pull him out of the fire if it had been poſſible: and not long after, methought I ſaw ſome overture thereof, which I apprehended readily; a particularity which I think to be known to very few, and the which I do the rather relate unto your Lordſhip, becauſe I hear it ſhould be talk'd, that while my Lord was in *Ireland* I revealed ſome matters againſt him, or I cannot tell what; which if it were not a mere ſlander as the reſt is, but had any, though never ſo little, colour, was ſurely upon this occaſion. The Queen, one day at *Noneſuch*, a little (as I remember) before *Cuffe*'s coming over, where I attended her, ſhewed a paſſionate diſtaſte of my Lord's proceedings in *Ireland*, as if they were unfortunate, without judgment, contemptuous, and not without ſome private end of his own, and all that might be; and was pleaſed, as ſhe ſpake of it to many that ſhe truſted leaſt, ſo to fall into the like ſpeech with me. Whereupon I, who was ſtill awake, and true to my grounds which I thought ſureſt for my Lord's good, ſaid to this effect: Madam, I know not the particulars of eſtate, and I know this, that princes actions muſt have no abrupt periods or concluſions; but otherwiſe I would think, that if you had my Lord of *Eſſex* here with a white ſtaff in his hand, as my Lord of *Leiceſter* had, and continued him ſtill about you for ſociety to your ſelf, and for an honour and ornament to your attendance and court in the eyes of your people, and in the eyes of foreign ambaſſadors, then were he in his right element; for to diſcontent him as you do, and yet to put arms and power into his hands, may be a kind of temptation to make him prove cumberſome and unruly. And therefore if you would *imponere bonam clauſulam*, and ſend for him, and ſatisfy him with honour here near you, if your affairs, which (as I have ſaid) I am not acquainted with, will permit it, I think were the beſt way. Which courſe, your Lordſhip knoweth, if it had been taken, then all had been well, and no contempt in my Lord's coming over, nor continuance of theſe jealouſies, which that employment of *Ireland* bred, and my Lord here in his former greatneſs. Well, the next news that I heard was, that my Lord was come over, and that he was committed to his chamber for leaving *Ireland* without the Queen's licence; this was at *Noneſuch*, where (as my duty was) I came to his Lordſhip, and talked with him privately about a quarter of an hour, and he aſked mine opinion of the courſe that was taken with him: I told him, my Lord, *Nubecula eſt, cito tranſibit*; it is but a miſt. But ſhall I tell your Lordſhip, it is as miſts are, if it go upwards, it may perhaps cauſe a ſhower; if downwards, it will clear up. And therefore, good my Lord, carry it ſo, as you take away by all means all umbrages and diſtaſtes from the Queen; and eſpecially if I were worthy to adviſe you, (as I have been by your ſelf thought, and now your queſtion imports the continuance of that opinion) obſerve three points: Firſt, make not this ceſſation or peace, which is concluded with *Tyrone*, as a ſervice wherein you glory, but as a ſhuffling up of a proſecution which was not very fortunate. Next, repreſent not to the Queen any neceſſity of eſtate, whereby, as by a coercion or wrench, ſhe ſhould think herſelf inforced to ſend you back into *Ireland*, but leave it to her. Thirdly, ſeek acceſs *importunè*, *opportunè*, ſeriouſly, ſportingly, every way. I remember my Lord was willing to hear me, but ſpake very few words, and ſhaked his head ſometimes, as if he thought I was in the wrong; but ſure I am, he did juſt contrary in every one of theſe three points. After this, during the while ſince my Lord was committed

to my lord-keeper's, I came divers times to the Queen, as I had uſed to do, about cauſes of her revenue and law buſineſs, as is well known; by reaſon of which acceſſes, according to the ordinary charities of court, it was given out, that I was one of them that incenſed the Queen againſt my Lord of *Eſſex*. Theſe ſpeeches I cannot tell, nor I will not think, that they grew any way from her Majeſty's own ſpeeches, whoſe memory I will ever honour; if they did, ſhe is with God, and *miſerum eſt ab illis laedi, de quibus non poſſis quaeri*. But I muſt give this teſtimony to my Lord *Cecil*, that one time in his houſe at the *Savoy*, he dealt with me directly, and ſaid to me, Couſin, I hear it, but I believe it not, that you ſhould do ſome ill office to my Lord of *Eſſex*; for my part I am merely paſſive, and not active in this action; and I follow the Queen, and that heavily, and I lead her not; my Lord of *Eſſex* is one that in nature I could conſent with as well as with any one living; the Queen indeed is my Sovereign, and I am her creature, I may not loſe her, and the ſame courſe I would wiſh you to take; whereupon I ſatisfied him how far I was from any ſuch mind. And as ſometimes it cometh to paſs, that mens inclinations are opened more in a toy, than in a ſerious matter: A little before that time, being about the middle of *Michaelmas* term, her Majeſty had a purpoſe to dine at my lodge at *Twicknam Park*, at which time I had (though I profeſs not to be a poet) prepared a ſonnet directly tending and alluding to draw on her Majeſty's reconcilement to my Lord; which I remember alſo I ſhewed to a great perſon, and one of my Lord's neareſt friends, who commended it: this, though it be (as I ſaid) but a toy, yet it ſhewed plainly in what ſpirit I proceeded; and that I was ready not only to do my Lord good offices, but to publiſh and declare my ſelf for him: and never was I ſo ambitious of any thing in my life-time, as I was to have carried ſome token or favour from her Majeſty to my Lord; uſing all the art I had, both to procure her Majeſty to ſend, and my ſelf to be the meſſenger. For as to the former I feared not to alledge to her, that this proceeding toward my Lord, was a thing towards the people very unplauſible; and therefore wiſhed her Majeſty, however ſhe did, yet to diſcharge herſelf of it, and lay it upon others; and therefore that ſhe ſhould intermix her proceeding with ſome immediate graces from herſelf, that the world might take knowledge of her princely nature and goodneſs, leſt it ſhould alienate the hearts of her people from her, which I did ſtand upon; knowing well that if ſhe once relented to ſend or viſit, thoſe demonſtrations would prove matter of ſubſtance for my Lord's good. And to draw that employment upon my ſelf, I adviſed her Majeſty, that whenſoever God ſhould move her to turn the light of her favours towards my Lord, to make ſignification to him thereof; that her Majeſty, if ſhe did it not in perſon, would at the leaſt uſe ſome ſuch mean as might not intitle themſelves to any part of the thanks, as perſons that were thought mighty with her to work her, or to bring her about; but to uſe ſome ſuch as could not be thought but a mere conduit of her own goodneſs. But I could never prevail with her, though I am perſuaded ſhe ſaw plainly whereat I levelled; and ſhe plainly had me in jealouſy, that I was not hers intirely, but ſtill had inward and deep reſpects towards my Lord, more than ſtood at that time with her will and pleaſure. About the ſame time I remember an anſwer of mine in a matter which had ſome affinity with my Lord's cauſe, which though it grew from me, went after about in others names. For her Majeſty being mightily incenſed with that book which was dedicated to my Lord of *Eſſex*, being a ſtory of the firſt year of King *Henry* IV.

thinking

thinking it a ſeditious pelude to put into the people's head boldneſs and faction, ſaid, ſhe had an opinion, that there was treaſon in it, and asked me if I could not find any places in it that might be drawn within caſe of treaſon: whereto I anſwered; for treaſon ſurely I found none, but for felony very many. And when her Majeſty haſtily asked me wherein, I told her, the author had committed very apparent theft: for he had taken moſt of the ſentences of *Cornelius Tacitus*, and tranſlated them into *Engliſh*, and put them into his text. And another time, when the Queen would not be perſuaded that it was his writing whoſe name was to it, but that it had ſome more miſchievous author; and ſaid with great indignation, that ſhe would have him rack'd to produce his author: I replied; Nay, Madam, he is a doctor, never rack his perſon, but rack his ſtyle; let him have pen, ink, and paper, and help of books, and be enjoined to continue the ſtory where it breaketh off, and I will undertake by collating the ſtyles, to judge whether he were the author or no. But for the main matter, ſure I am, when the Queen at any time aſked mine opinion of my Lord's caſe, I ever in one tenour ſaid unto her; that they were faults which the law might term contempts; becauſe they were the tranſgreſſion of her particular directions and inſtructions: but then what defence might be made of them, in regard of the great intereſt the perſon had in her Majeſty's favour; in regard of the greatneſs of his place, and the ampleneſs of his commiſſion; in regard of the nature of the buſineſs, being action of war, which in common caſes cannot be tyed to ſtrictneſs of inſtructions; in regard of the diſtance of the place, having alſo a ſea between, that his demands and her commands muſt be ſubject to wind and weather; in regard of a council of ſtate in *Ireland*, which he had at his back to avow his actions upon; and laſtly, in regard of a good intention, that he would alledge for himſelf; which I told her in ſome religions was held to be a ſufficient diſpenſation for God's commandments, much more for princes: In all theſe regards, I beſought her Majeſty to be adviſed again and again, how ſhe brought the cauſe into any publick queſtion. Nay, I went farther; for I told her, my Lord was an eloquent and well-ſpoken man; and beſides his eloquence of nature or art, he had an eloquence of accident which paſſed them both, which was the pity and benevolence of his hearers; and therefore, that when he ſhould come to his anſwer for himſelf, I doubted his words would have ſo unequal paſſage above theirs that ſhould charge him, as would not be for her Majeſty's honour; and therefore wiſhed the concluſion might be, that they might wrap it up privately between themſelves; and that ſhe would reſtore my Lord to his former attendance, with ſome addition of honour to take away diſcontent. But this I will never deny; that I did ſhew no approbation generally of his being ſent back again into *Ireland*, both becauſe it would have carried a repugnancy with my former diſcourſe, and becauſe I was in mine own heart fully perſuaded, that it was not good, either for the Queen, or for the ſtate, or for himſelf: and yet I did not diſſuade it neither, but left it ever as *locus lubricus*. For this particularity, I do well remember, that after your Lordſhip was named for the place in *Ireland*, and not long before your going, it pleaſed her Majeſty at *Whitehall* to ſpeak to me of that nomination: at which time I ſaid to her; Surely, Madam, if you mean not to employ my Lord of *Eſſex* thither again, your Majeſty cannot make a better choice; and was going on to ſhew ſome reaſon, and her Majeſty interrupted me with great paſſion: *Eſſex!* ſaid ſhe; whenſoever I ſend *Eſſex* back again into *Ireland*, I will marry you, claim it of me. Whereunto I ſaid; Well, Madam, I will releaſe that contract, if his

going

going be for the good of your ſtate. Immediately after the Queen had thought of a courſe (which was alſo executed) to have ſomewhat publiſhed in the *Star-Chamber*, for the ſatisfaction of the world, touching my Lord of *Eſſex* his reſtraint, and my Lord not to be called to it; but occaſion to be taken by reaſon of ſome libels then diſperſed: which when her Majeſty propounded unto me, I was utterly againſt it; and told her plainly, that the people would ſay, that my Lord was wounded upon his back, and that juſtice had her balance taken from her, which ever conſiſted of an accuſation and defence; with many other quick and ſignificant terms to that purpoſe: inſomuch, that I remember, I ſaid, that my Lord *in foro famae* was too hard for her; and therefore wiſhed her, as I had done before, to wrap it up privately. And certainly I offended her at that time, which was rare with me: for I call to mind, that both the *Chriſtmas*, *Lent*, and *Eaſter* term following, though I came divers times to ſee her upon law buſineſs, yet methought her face and manner was not ſo clear and open to me as it was at the firſt. And ſhe did directly charge me, that I was abſent that day at the *Star-Chamber*, which was very true; but I alledged ſome indiſpoſition of body to excuſe it: and during all the time aforeſaid, there was *altum ſilentium* from her to me, touching my Lord of *Eſſex*'s cauſes.

But towards the end of *Eaſter* term, her Majeſty brake with me, and told me, that ſhe had found my words true; for that the proceeding in the *Star-Chamber* had done no good, but rather kindled factious bruits (as ſhe termed them) than quenched them; and therefore, that ſhe was determined now for the ſatisfaction of the world, to proceed againſt my Lord in the *Star-Chamber* by an information *ore tenus*, and to have my Lord brought to his anſwer: howbeit, ſhe ſaid, ſhe would aſſure me, that whatſoever ſhe did ſhould be towards my Lord *ad caſtigationem*, *& non ad deſtructionem*; as indeed ſhe had often repeated the ſame phraſe before: whereunto I ſaid, (to the end utterly to divert her) Madam, if you will have me ſpeak to you in this argument, I muſt ſpeak to you as Fryar *Bacon*'s head ſpake, that ſaid firſt, *time is*; and then *time was*; *and time will never be*: for certainly, ſaid I, it is now far too late; the matter is cold, and hath taken too much wind. Whereat ſhe ſeemed again offended, and roſe from me; and that reſolution for a while continued: and after, in the beginning of *Midſummer* term, I attending her, and finding her ſettled in that reſolution, (which I heard of alſo otherwiſe) ſhe falling upon the like ſpeech; it is true, that ſeeing no other remedy, I ſaid to her ſlightly, Why, Madam, if you will needs have a proceeding, you were beſt have it in ſome ſuch ſort as *Ovid* ſpake of his miſtreſs; *eſt aliquid luce patente minus*; to make a council-table matter of it, and there an end: which ſpeech again ſhe ſeemed to take in ill part; but yet I think it did good at that time, and helped to divert that courſe of proceeding by information in the *Star-Chamber*. Nevertheleſs, afterwards it pleas'd her to make a more ſolemn matter of the proceeding; and ſome few days after, when order was given that the matter ſhould be heard at *York-houſe*, before an aſſembly of counſellors, peers, and judges, and ſome audience of men of quality to be admitted: and then did ſome principal counſellors ſend for us of the learned council, and notify her Majeſty's pleaſure unto us; ſave that it was ſaid to me openly by one of them, that her Majeſty was not yet reſolved whether ſhe would have me forborn in the buſineſs or no. And hereupon might ariſe that other ſiniſter and untrue ſpeech that I hear is raiſed of me, how I was a ſuitor to be uſed againſt my Lord of *Eſſex* at that time: for it is very true, that I that knew well what had paſſed between the Queen

and

and me, and what occaſion I had given her both of diſtaſte and diſtruſt, in croſſing her diſpoſition, by ſtanding ſtedfaſtly for my Lord of *Eſſex*, and ſuſpecting it alſo to be a ſtratagem ariſing from ſome particular emulation, I writ to her two or three words of complement, ſignifying to her Majeſty, that if ſhe would be pleaſed to ſpare me in my Lord of *Eſſex*'s cauſe, out of the conſideration ſhe took of my obligation towards him, I ſhould reckon it for one of her greateſt favours: but otherwiſe deſiring her Majeſty to think that I knew the degrees of duties; and that no particular obligation whatſoever to any ſubject could ſupplant or weaken that entireneſs of duty that I did owe and bear to her and her ſervice; and this was the goodly ſuit I made, being a reſpect no man that had his wits could have omitted: but nevertheleſs I had a farther reach in it; for I judged that day's work would be a full period of any bitterneſs or harſhneſs between the Queen and my Lord: and therefore, if I declared myſelf fully according to her mind at that time, which could not do my Lord any manner of prejudice, I ſhould keep my credit with her ever after, whereby to do my Lord ſervice. Hereupon the next news that I heard, was, that we were all ſent for again; and that her Majeſty's pleaſure was, we all ſhould have parts in the buſineſs: and the Lords falling into diſtribution of our parts, it was allotted to me, that I ſhould ſet forth ſome undutiful carriage of my Lord, in giving occaſion and countenance to a ſeditious pamphlet, as it was term'd, which was dedicated unto him, which was the book before mentioned of King *Henry* IV. Whereupon I replied to that allotment, and ſaid to their Lordſhips, that it was an old matter, and had no manner of coherence with the reſt of the charge, being matters of *Ireland:* and therefore, that I having been wronged by bruits before, this would expoſe me to them more; and it would be ſaid I gave in evidence mine own tales. It was anſwered again with good ſhew, that becauſe it was conſidered how I ſtood tied to my Lord of *Eſſex*, therefore that part was thought fitteſt for me, which did him leaſt hurt: for that whereas all the reſt was matter of charge and accuſation, this only was but matter of caveat and admonition. Wherewith, though I was in mine own mind little ſatisfied; becauſe I knew well a man were better to be charged with ſome faults, than admoniſhed of ſome others: yet the concluſion binding upon the Queen's pleaſure directly, *volens nolens*, I could not avoid that part that was laid upon me; which part, if in the delivery I did handle not tenderly, (though no man before me did in ſo clear terms free my Lord from all diſloyalty as I did;) that your Lordſhip knoweth muſt be aſcribed to the ſuperior duty I did owe to the Queen's fame and honour in a publick proceeding, and partly to the intention I had to uphold myſelf in credit and ſtrength with the Queen, the better to be able to do my Lord good offices afterwards: for as ſoon as this day was paſt, I loſt no time; but the very next day following, (as I remember) I attended her Majeſty, fully reſolved to try and put in ure my utmoſt endeavour (ſo far as I in my weakneſs could give furtherance) to bring my Lord again ſpeedily into court and favour; and knowing (as I ſuppoſed at leaſt) how the Queen was to be uſed, I thought that to make her conceive that the matter went well then, was the way to make her leave off there: and I remember well, I ſaid to her, you have now Madam obtained victory over two things, which the greateſt princes in the world cannot at their wills ſubdue; the one is over fame; the other is over a great mind: for ſurely the world is now (I hope) reaſonably well ſatisfied; and for my Lord, he did ſhew that humiliation towards your Majeſty, as I am perſuaded he was never in his life-time more fit for your Majeſty's favour than he is now:

now: therefore if your Majeſty will not mar it by lingering, but give over at the beſt, and now you have made ſo good a full point, receive him again with tenderneſs, I ſhall then think, that all that is paſt is for the beſt. Whereat I remember ſhe took exceedin g great contentment, and did often iterate and put me in mind, that ſhe had ever ſaid, that her proceedings ſhould be *ad reparationem*, and not *ad ruinam*; as who ſaith, that now was the time I ſhould well perceive, that that ſaying of hers ſhould prove true. And farther ſhe willed me to ſet down in writing all that paſſed that day. I obeyed her commandment, and within ſome few days after brought her again the narration, which I did read unto her in two ſeveral afternoons: and when I came to that part that ſet forth my Lord's own anſwer, (which was my principal care) I do well bear in mind, that ſhe was extraordinarily moved with it, in kindneſs and relenting towards my Lord; and told me afterwards, (ſpeaking how well I had expreſſed my Lord's part) that ſhe perceived old love would not eaſily be forgotten: whereunto I anſwered ſuddenly, that I hoped ſhe meant that by herſelf. But in concluſion I did adviſe her, that now ſhe had taken a repreſentation of the matter to herſelf, that ſhe would let it go no farther: for Madam, ſaid I, the fire blazeth well already, what ſhould you tumble it? And beſides, it may pleaſe you to keep a convenience with yourſelf in this caſe: for ſince your expreſs direction was, there ſhould be no regiſter nor clerk to take this ſentence, nor no record or memorial made up of the proceeding, why ſhould you now do that popularly, which you would not admit to be done judicially? Whereupon ſhe did agree, that that writing ſhould be ſuppreſſed; and I think there were not five perſons that ever ſaw it. But from this time forth, during the whole latter end of that ſummer, while the court was at *Nonſuch* and *Oatlands*, I made it my task and ſcope to take and give occaſions for my Lord's redintegration in his fortunes: which my intention I did alſo ſignify to my Lord as ſoon as ever he was at his liberty; whereby I might without peril of the Queen's indignation write to him: and having received from his Lordſhip a courteous and loving acception of my good will and endeavours, I did apply it in all my acceſſes to the Queen, which were very many at that time; and purpoſely ſought and wrought upon other variable pretences, but only and chiefly for that purpoſe. And on the other ſide, I did not forbear to give my Lord from time to time faithful advertiſement what I found, and what I wiſhed. And I drew for him by his appointment ſome letters to her Majeſty; which though I knew well his Lordſhip's gift and ſtile was far better than mine own, yet, becauſe he required it, alledging, that by his long reſtraint he was grown almoſt a ſtranger to the Queen's preſent conceipts, I was ready to perform it: and ſure I am, that for the ſpace of ſix weeks or two months, it proſpered ſo well, as I expected continually his reſtoring to his attendance. And I was never better welcome to the Queen, nor more made of than when I ſpake fulleſt and boldeſt for him: in which kind the particulars were exceeding many; whereof, for an example, I will remember to your Lordſhip one or two. As at one time I call to mind, her Majeſty was ſpeaking of a fellow that undertook to cure, or at leaſt to eaſe my brother of his gout, and asked me how it went forward: and I told her Majeſty, that at the firſt he received good by it; but after in the courſe of his cure he found himſelf at a ſtay, or rather worſe: the Queen ſaid again, I will tell you *Bacon* the error of it: the manner of theſe phyſicians, and eſpecially theſe empericks, is to continue one kind of medicine; which at the firſt is proper, being to draw out the ill humour; but after they have not

the

the diſcretion to change their medicine, but apply ſtill drawing medicines, when they ſhould rather intend to cure and corroborate the part. Good Lord, Madam, (ſaid I) how wiſely and aptly can you ſpeak and diſcern of phyſick miniſtred to the body, and conſider not that there is the like occaſion of phyſick miniſtred to the mind: as now in the caſe of my Lord of *Eſſex*, your princely word ever was, that you intended ever to reform his mind, and not ruin his fortune: I know well you cannot but think that you have drawn the humour ſufficiently; and therefore it were more than time, and it were but for doubt of mortifying or exulcerating, that you did apply and miniſter ſtrength and comfort unto him: for theſe ſame gradations of yours are fitter to corrupt than correct any mind of greatneſs. And another time I remember ſhe told me for news, that my Lord had written unto her ſome very dutiful letters, and that ſhe had been moved by them; and when ſhe took it to be the abundance of his heart, ſhe found it to be but a preparative to a ſuit for the renewing of his farm of ſweet wines. Whereunto I replied, O Madam, how doth your Majeſty conſtrue theſe things, as if theſe two could not ſtand well together, which indeed nature hath planted in all creatures! For there are but two ſympathies, the one towards perfection, the other owards preſervation; that to perfection, as the iron tendeth to the loadſtone; that to preſervation, as the vine will creep towards a ſtake or prop that ſtands by it; not for any love to the ſtake, but to uphold itſelf. And therefore, Madam, you muſt extinguiſh my Lord's deſire to do you ſervice, is as to his perfection, that which he thinks himſelf to be born for; whereas his deſire to obtain this thing of you, is but for a ſuſtentation. And not to trouble your Lordſhip with many other particulars like unto theſe, it was at the ſelf-ſame time that I did draw, with my Lord's privity, and by his appointment, two letters, the one written as from my brother, the other as an anſwer returned from my Lord, both to be by me in ſecret manner ſhewed to the Queen, which it pleaſed my Lord very ſtrangely to mention at the bar; the ſcope of which were but to repreſent and picture forth unto her Majeſty my Lord's mind to be ſuch, as I knew her Majeſty would faineſt have had it; which letters whoſoever ſhall ſee, (for they cannot now be retracted or altered, being by reaſon of my brother's, or his Lordſhip's ſervants delivery, long ſince come into divers hands) let him judge, eſpecially if he knew the Queen, and do remember thoſe times, whether they were not the labours of one that ſought to bring the Queen about for my Lord of *Eſſex* his good. The troth is, that the iſſue of all his dealing grew to this, that the Queen by ſome ſlackneſs of my Lord's, as I imagine, liked him worſe and worſe, and grew more incenſed towards him. Then ſhe remembering belike the continual, and inceſſant, and confident ſpeeches and courſes that I had held on my Lord's ſide became utterly alienated from me, and for the ſpace of (at leaſt) three months, which was between *Michaelmas* and *New-year's-tide* following, would not ſo much as look on me, but turned away from me with expreſs and purpoſe-like diſcountenance whereſoever ſhe ſaw me; and at ſuch time as I deſired to ſpeak with her about law-buſineſs, ever ſent me forth very ſlight refuſals, inſomuch as it is moſt true, that immediately after *New-year's-tide* I deſired to ſpeak with her, and being admitted to her, I dealt with her plainly; and ſaid, Madam, I ſee you withdraw your favour from me, and now I have loſt many friends for your ſake, I ſhall loſe you too; you have put me like one of thoſe that the *French* men call *enfans perdus*, that ſerve on foot before horſemen, ſo have you put me into matters of envy without place, or without ſtrength; and I know at cheſs a pawn before the King is ever much plaid upon; a great many

many love me not, becauſe they think I have been againſt my Lord of *Eſſex*; and you love me not, becauſe you know I have been for him; yet will I never repent me, that I have dealt in ſimplicity of heart towards you both, without reſpect of cautions to myſelf; and therefore *vivus videnſque pereo*: If I do break my neck, I ſhall do it in a manner as Maſter *Dorington* did it, which walked on the battlements of the church many days, and took a view and ſurvey where he ſhould fall. And ſo, Madam, ſaid I, I am not ſo ſimple but that I take a proſpect of mine overthrow, only I thought I would tell you ſo much, that you may know that it was faith, and not folly that brought me into it, and ſo I will pray for you. Upon which ſpeeches of mine uttered with ſome paſſion, it is true her Majeſty was exceedingly moved; and accumulated a number of kind and gracious words upon me, and willed me to reſt upon this, *gratia mea ſufficit*, and a number of other ſenſible and tender words and demonſtrations, ſuch as more could not be; but as touching my Lord of *Eſſex*, *ne verbum quidem*. Whereupon I departed, reſting then determined to meddle no more in the matter; as that, that I ſaw would overthrow me, and not be able to do him any good. And thus I made mine own peace with mine own confidence at that time; and this was the laſt time I ſaw her Majeſty before the eighth of *February*, which was the day of my Lord of *Eſſex* his misfortune; after which time, for that I performed at the bar in my publick ſervice, your Lordſhip knoweth by the rules of duty, that I was to do it honeſtly, and without prevarication; but for any putting myſelf into it, I proteſt before God, I never moved either the Queen, or any perſon living, concerning my being uſed in the ſervice, either of evidence or examination; but it was merely laid upon me with the reſt of my fellows. And for the time which paſſed, I mean between the arraignment and my Lord's ſuffering, I well remember I was but once with the Queen, at what time, though I durſt not deal directly for my Lord as things then ſtood; yet generally I did both commend her Majeſty's mercy, terming it to her as an excellent balm that did continually diſtil from her ſovereign hands, and made an excellent odour in the ſenſes of her people; and not only ſo, but I took hardineſs to extenuate, not the fact, (for that I durſt not;) but the danger, telling her that if ſome baſe or cruel-minded perſons had entered into ſuch an action, it might have cauſed much blood and combuſtion: but it appeared well, they were ſuch as knew not how to play the malefactors, and ſome other words which I now omit. And as for the reſt of the carriage of myſelf in that ſervice, I have many honourable witneſſes that can tell that the next day after my Lord's arraignment, by my diligence and information touching the quality and nature of the offenders, ſix of nine were ſtayed, which otherwiſe had been attainted, I bringing their Lordſhips letter for their ſtay, after the jury was ſworn to paſs upon them; ſo near it went: and how careful I was, and made it my part, that whoſoever was in trouble about that matter, as ſoon as ever his caſe was ſufficiently known and defined of, might not continue in reſtraint, but be ſet at liberty; and many other parts, which I am well aſſured of ſtood with the duty of an honeſt man. But indeed I will not deny for the caſe of Sir *Thomas Smith* of *London*, the Queen demanding my opinion of it, I told her, I thought it was as hard as many of the reſt; but what was the reaſon? Becauſe at that time I had ſeen only his accuſation, and had never been preſent at any examination of his; and the matter ſo ſtanding, I had been very untrue to my ſervice, if I had not delivered that opinion. But afterwards, upon a re-examination of ſome that charged him, who weakened their own teſtimony; and eſpecially hearing himſelf *viva voce*, I went inſtantly

ſtantly to the Queen, out of the ſoundneſs of my conſcience, not regarding what opinion I had formerly delivered, and told her Majeſty, I was ſatisfied and reſolved in my conſcience, that for the reputation of the action, the plot was to countenance the action farther by him in reſpect of his place, than they had indeed any intereſt or intelligence with him. It is very true alſo, about that time her Majeſty taking a liking of my pen, upon that which I formerly had done concerning the proceeding at *York-houſe*, and likewiſe upon ſome other declarations, which in former times by her appointment I put in writing, commanded me to pen that book, which was publiſhed for the better ſatisfaction of the world; which I did, but ſo, as never ſecretary had more particular and expreſs directions and inſtructions in every point how to guide my hand in it; and not only ſo, but after that I had made a firſt draught thereof, and propounded it to certain principal counſellors by her Majeſty's appointment, it was peruſed, weighed, cenſured, altered, and made almoſt anew, writing according to their Lordſhips better conſideration; wherein their Lordſhips and myſelf both were as religious and curious of truth, as deſirous of ſatisfaction: and myſelf indeed gave only words and form of ſtile in purſuing their direction. And after it had paſſed their allowance, it was again exactly peruſed by the Queen herſelf, and ſome alterations made again by her appointment: nay, and after it was ſet to print, the Queen, who as your Lordſhip knoweth, as ſhe was excellent in great matters, ſo ſhe was exquiſite in ſmall; and noted that I could not forget my ancient reſpect to my Lord of *Eſſex*, in terming him ever my Lord of *Eſſex*, my Lord of *Eſſex*, almoſt in every page of the book, which ſhe thought not fit, but would have it made *Eſſex*, or the late Earl of *Eſſex*; whereupon of force it was printed *de novo*, and the firſt copies ſuppreſſed by her peremptory commandment. And this, my good Lord, to my fartheſt remembrance, is all that paſſed wherein I had part; which I have ſet down as near as I could in the very words and ſpeeches that were uſed, not becauſe they are worthy the repetition, I mean thoſe of mine own; but to the end your Lordſhip may lively and plainly diſcern between the face of truth, and a ſmooth tale: And the rather alſo, becauſe in things that paſſed a good while ſince, the very words and phraſes did ſometimes bring to my remembrance the matters, wherein I report me to your honourable judgment, whether you do not ſee the traces of an honeſt man: and had I been as well believed either by the Queen or by my Lord, as I was well heard by them both, both my Lord had been fortunate, and ſo had myſelf in his fortune.

To conclude therefore, I humbly pray your Lordſhip to pardon me for troubling you with this long narration; and that you will vouchſafe to hold me in your good opinion, till you know I have deſerved, or find that I ſhall deſerve the contrary; and ſo even I continue

At your Lordſhip's honourable

commandments very humbly,

F. B.

CERTAIN

CONSIDERATIONS

TOUCHING THE

PLANTATION

IN

IRELAND.

Preſented to His MAJESTY, 1606.

IT ſeemeth God hath reſerved to your Majeſty's times two works, which amongſt the works of Kings have the ſupreme pre-eminence; the union, and the plantation of kingdoms. For although it be a great fortune for a King to deliver or recover his kingdom from long continued calamities; yet in the judgment of thoſe that have diſtinguiſhed of the degrees of ſovereign honour, to be a founder of eſtates or kingdoms, excelleth all the reſt. For as in arts and ſciences, to be the firſt inventor is more than to illuſtrate or amplify: and as in the works of God, the creation is greater than the preſervation; and as in the works of nature, the birth and nativity is more than the continuance; ſo in kingdoms, the firſt foundation or plantation is of more noble dignity and merit than all that followeth. Of which foundations there being but two kinds; the firſt that maketh one of more; and the ſecond, that maketh one of none; the latter reſembling the creation of the world, which was *de nihilo ad quid*; and the former, the edification of the church, which was *de multiplici ad ſimplex, vel ad unum:* it hath pleaſed the divine providence, in ſingular favour to your Majeſty, to put both theſe kinds of foundations or regenerations into your hand; the one, in the union of the iſland of *Britain*; the other, in the plantation of great and noble parts of the iſland of *Ireland:* which enterprizes being once happily accompliſhed; then that which was uttered by one of the beſt orators, in one of the worſt verſes, *O fortunatam natam me conſule Romam*; may be far more truly and properly applied to your Majeſty's acts; *natam te rege Britanniam*; *natam Hiberniam:* For he ſpake improperly of deliverance and preſervation, but in theſe acts of yours it may be verified more naturally For indeed unions and plantations are the very nativities or birth-days of kingdoms: wherein likewiſe your Majeſty hath yet a fortune extraordinary, and differing from former examples in the ſame kind. For moſt part of unions and plantations of kingdoms have been founded in the effuſion of blood; but your Majeſty ſhall build *in ſolo puro, & in area pura*, that ſhall need no ſacrifices expiatory for blood; and therefore, no doubt, under a higher and more aſſured bleſſing. Wherefore, as I adventured, when I was leſs known and leſs particularly bound to your Majeſty, than ſince, by your undeſerved favour I have been, to write ſomewhat touching the union, which your Majeſty was pleaſed to accept, and which

which ſince I have to my power ſeconded by my travels, not only in diſcourſe, but in action: ſo I am thereby encouraged to do the like, touching this matter of plantation; hoping that your Majeſty will, through the weakneſs of my ability, diſcern the ſtrength of my affection, and the honeſt and fervent deſire I have to ſee your Majeſty's perſon, name and times, bleſſed and exalted above thoſe of your royal progenitors. And I was the rather invited this to do by the remembrance, that when the Lord Chief Juſtice deceaſed, *Popham*, ſerved in the place wherein I now ſerve, and afterwards in the attorney's place, he laboured greatly in the laſt project, touching the plantation of *Munſter*: which nevertheleſs, as it ſeemeth, hath given more light by the errors thereof, what to avoid, than by the direction of the ſame what to follow.

First therefore, I will ſpeak ſomewhat of the excellency of the work; and then, of the means to compaſs and effect it. For the excellency of the work, I will divide it into four noble and worthy conſequences that will follow thereupon. The firſt of the four, is honour; whereof I have ſpoken enough already, were it not that the harp of *Ireland* puts me in mind of that glorious emblem or allegory, wherein the wiſdom of antiquity did figure and ſhadow out the works of this nature. For the poets feigned, that *Orpheus* by the virtue and ſweetneſs of his harp did call and aſſemble the beaſts and birds, of their nature wild and ſavage, to ſtand about him, as in a theatre; forgetting their affections, of fierceneſs, of luſt, and of prey; and liſtening to the tunes and harmonies of the harp; and ſoon after called likewiſe the ſtones and woods to remove, and ſtand in order about him: which fable was anciently interpreted of the reducing and plantation of kingdoms; when people of barbarous manners are brought to give over and diſcontinue their cuſtoms of revenge and blood, and of diſſolute life, and of theft, and of rapine; and to give ear to the wiſdom of laws and governments; whereupon immediately followeth the calling of ſtones for building and habitation; and of trees for the ſeats of houſes, orchards, and encloſures, and the like.

This work therefore, of all other, moſt memorable and honourable, your Majeſty hath now in hand; eſpecially, if your Majeſty join the harp of *David*, in caſting out the evil ſpirit of ſuperſtition, with the harp of *Orpheus*, in caſting out deſolation and barbariſm.

The ſecond conſequence of this enterprize, is the avoiding of an inconvenience, which commonly attendeth upon happy times, and is an evil effect of a good cauſe. The revolution of this preſent age ſeemeth to incline to peace, almoſt generally in theſe parts; and your Majeſty's moſt chriſtian and virtuous affections do promiſe the ſame more eſpecially to theſe your kingdoms. An effect of peace in fruitful kingdoms (where the ſtock of people receiving no conſumption nor diminution by war, doth continually multiply and increaſe) muſt in the end be a ſurcharge or overflow of people more than the territories can well maintain; which many times inſinuating a general neceſſity and want of means into all eſtates, doth turn external peace into internal troubles and ſeditions. Now what an excellent diverſion of this inconvenience is miniſtred (by God's providence) to your Majeſty in this plantation of *Ireland?* Wherein ſo many families may receive ſuſtentations and fortunes; and the diſcharge of them alſo out of *England* and *Scotland* may prevent many ſeeds of future perturbations: ſo that it is, as if a man were troubled for the avoidance of water from the place where he hath built his houſe, and afterwards ſhould adviſe with himſelf to caſt thoſe waters, and to turn them into fair pools or ſtreams, for pleaſure, proviſion, or uſe. So

ſhall

ſhall your Majeſty in this work have a double commodity in the avoidance of people here, and in making uſe of them there.

THE third conſequence is the great ſafety that is like to grow to your Majeſty's eſtate in general by this act; in diſcomfiting all hoſtile atttempts of foreigners, which the weakneſs of that kingdom hath heretofore invited: wherein I ſhall not need to fetch reaſons afar off, either for the general or particular. For the general, becauſe nothing is more evident than that, which one of the *Romans* ſaid of *Peloponneſus: Teſtudo intra tegumen tuta eſt*; the tortoiſe is ſafe within her ſhell: but if ſhe put forth any part of her body, then it endangereth not only the part which is ſo put forth, but all the reſt. And ſo we in armour, if any part be left naked, it puts in hazard the whole perſon. And in the natural body of man, if there be any weak or affected part, it is enough to draw rheums or malign humours unto it, to the interruption of the health of the whole body.

AND for the particular, the example is too freſh, that the indiſpoſition of that kingdom hath been a continual attractive of troubles and inſeſtations upon this eſtate; and though your Majeſty's greatneſs doth in ſome ſort diſcharge this fear, yet with your encreaſe of power it cannot be, but envy is likewiſe encreaſed.

THE fourth and laſt conſequence is the great profit and ſtrength which is like to redound to your crown, by the working upon this unpoliſh'd part thereof: whereof your Majeſty (being in the ſtrength of your years) are like, by the good pleaſure of almighty God, to receive more than the firſt fruits; and your poſterity a growing and ſpringing vein of riches and power. For this iſland being another *Britain*, as *Britain* was ſaid to be another world, is endowed with ſo many dowries of nature, (conſidering the fruitfulneſs of the ſoil, the ports, the rivers, the fiſhings, the quarries, the woods, and other materials; and eſpecially the race and generation of men, valiant, hard, and active) as it is not eaſy, no not upon the continent, to find ſuch confluence of commodities, if the hand of man did join with the hand of nature. So then for the excellency of the work, in the point of honour, policy, ſafety, and utility, here I ceaſe.

FOR the means to effect this work, I know your Majeſty ſhall not want the information of perſons expert and induſtrious, which have ſerved you there, and know the region: nor the advice of a grave and prudent council of eſtate here; which know the pulſes of the hearts of people, and the ways and paſſages of conducting great actions: beſides that, which is above all, which is that fountain of wiſdom and univerſality which is in yourſelf: yet notwithſtanding in a thing of ſo publick a nature, it is not amiſs for your Majeſty to hear variety of opinion: For as *Demoſthenes* ſaith well; the good fortune of a prince or ſtate, doth ſometimes put a good motion into a fool's mouth. I do think therefore the means of accompliſhing this work conſiſteth of two principal parts. The firſt, the invitation and encouragement of undertakers: the ſecond, the order and policy of the project itſelf. For as in all engines of the hand, there is ſomewhat that giveth the motion and force, and the reſt ſerveth to guide and govern the ſame: ſo is it in theſe enterprizes or engines of eſtate. As for the former of theſe, there is no doubt, but next unto the providence and finger of God, which writeth theſe virtuous and excellent deſires in the tables of your Majeſty's heart; your authority and your affection is *primus motor* in this cauſe: and therefore the more ſtrongly and fully your Majeſty ſhall declare yourſelf in it, the more ſhall you quicken and animate the whole proceeding. For this is an action, which as the worthineſs of it doth bear it, ſo the nature of it requireth it to

be

be carried in ſome height of reputation, and fit, in mine opinion, for pulpits and parliaments, and all places to ring and reſound of it. For that which may ſeem vanity in ſome things, (I mean matter of fame) is of great efficacy in this caſe.

But now let me deſcend to the inferior ſpheres, and ſpeak what co-operation in the ſubjects or undertakers may be raiſed and kindled, and by what means. Therefore to take plain grounds, which are the ſureſt, all men are drawn into actions by three things, pleaſure, honour, and profit. But before I purſue theſe three motives, it is fit in this place to interlace a word or two of the quality of the undertakers; wherein my opinion ſimply is, that if your Majeſty ſhall make theſe portions of land, which are to be planted, as rewards or as ſuits, or as fortunes for thoſe that are in want, and are likelieſt to ſeek after them; that they will not be able to go through with the charge of good and ſubſtantial plantations, but will *deficere in opere medio*; and then this work will ſucceed, as *Tacitus* ſaith, *acribus initiis, ſine incurioſo*. So that this muſt rather be an adventure for ſuch as are full, than a ſetting up of thoſe that are low of means: for thoſe men are fit indeed to perform theſe undertakings, which were fit to purchaſe dry reverſions after lives or years, or ſuch as were fit to put out money upon long returns.

I do not ſay, but that I think the undertakers themſelves will be glad to have ſome captains, or men of ſervice intermixed among them for their ſafety; but I ſpeak of the generality of undertakers, which I wiſh were men of eſtate and plenty.

Now therefore it followeth well to ſpeak of the aforeſaid three motives; for it will appear the more, how neceſſary it is to allure by all means undertakers; ſince thoſe men will be leaſt fit which are like to be moſt in appetite of themſelves, and thoſe moſt fit which are like leaſt to deſire it.

First therefore, for pleaſure in this region or tract of ſoil, there are no warm winters, nor orange-trees, nor ſtrange beaſts, or birds, or other points of curioſity or pleaſure, as there are in the *Indies* and the like: ſo as there can be found no foundation made upon matter of pleaſure, otherwiſe than that the very general deſire of novelty and experiment in ſome ſtirring natures may work ſomewhat; and therefore it is the other two points of honour and profit, whereupon we are wholly to reſt.

For honour or countenance, if I ſhall mention to your Majeſty, whether in wiſdom you ſhall think convenient, the better to expreſs your affection to the enterprize, and for a pledge thereof, to add the earldom of *Ulſter* to the prince's titles, I ſhall but learn it out of the practice of King *Edward* I. who firſt uſed the like courſe, as a mean the better to reſtrain the country of *Wales:* and I take it, the prince of *Spain* hath the addition of a province in the kingdom of *Naples*; and other precedents I think there are, and it is like to put more life and encouragement into the undertakers.

Also conſidering the large territories which are to be planted, it is not unlike your Majeſty will think of raiſing ſome nobility there; which if it be done merely upon new titles of dignity, having no manner of reference to the old; and if it be done alſo without putting too many portions into one hand; and laſtly, if it be done without any great franchiſes or commands, I do not ſee any peril can enſue thereof: as on the other ſide, it is like it may draw ſome perſons of great eſtate and means into the action, to the great furtherance and ſupply of the charges thereof.

And laſtly for knighthood, to ſuch perſons as have not attained it; or otherwiſe knighthood, with ſome new difference and precedence, it may

no doubt work with many. And if any man think that theſe things which I propound, are *aliquid nimis*, for the proportion of this action, I confeſs plainly, that if your Majeſty will have it really and effectually performed, my opinion is, you cannot beſtow too much ſun-ſhine upon it. For *lunae radiis non matureſcit botrus.* Thus much for honour.

For profit, it will conſiſt in three parts:

First, The eaſy rates that your Majeſty ſhall be pleaſed to give the undertakers of the land, they ſhall receive.

Secondly, The liberties which you may be pleaſed to confer upon them. When I ſpeak of liberties, I mean not liberties of juriſdiction; as counties palatine, or the like, (which it ſeemeth hath been the error of the ancient donations and plantations in that country;) but I mean only liberties tending to commodity; as liberty to tranſport any of the commodities growing upon the countries new planted; liberty to import from hence all things appertaining to their neceſſary uſe, cuſtom-free; liberty to take timber or other materials in your Majeſty's woods there, and the like.

The third is, eaſe of charge; that the whole maſs of charge doth not reſt upon the private purſe of the undertakers.

For the two former of theſe, I will paſs them over; becauſe in that project, which with good diligence and providence hath been preſented to your Majeſty by your miniſters of that kingdom, they are in my opinion well handled.

For the third, I will never deſpair, but that the parliament of *England*, if it may perceive, that this action is not a flaſh, but a ſolid and ſettled purſuit, will give aid to a work ſo religious, ſo politick, and ſo profitable. And the diſtribution of charge (if it be obſerved) falleth naturally into three kinds of charge, and every of thoſe charges reſpectively ought to have its proper fountain and iſſue. For as there proceedeth from your Majeſty's royal bounty and munificence, the gift of the land, and the other materials; together with the endowment of liberties; and as the charge which is private, as building of houſes, ſtocking of grounds, victual, and the like, is to reſt upon the particular undertakers: ſo whatſoever is publick, as building of churches, walling of towns, town-houſes, bridges, cauſeways, or highways, and the like, ought not ſo properly to lie upon particular perſons, but to come from the publick eſtate of this kingdom; to which this work is like to return ſo great an addition of glory, ſtrength, and commodity.

For the project itſelf, I ſhall need to ſpeak the leſs, in regard it is ſo conſiderately digeſted already for the county of *Tyrone:* and therefore my labour ſhall be but in thoſe things wherein I ſhall either add to, or diſſent from that which is ſet down; which will include five points or articles. Firſt, they mention a commiſſion for this plantation, which of all things is moſt neceſſary, both to direct and appeaſe controverſies, and the like.

To this I add two propoſitions: the one, that which perhaps is meant, though not expreſſed, that the commiſſioners ſhould for certain times reſide and abide in ſome habitable town of *Ireland*, near in diſtance to the country where the plantation ſhall be; to the end, both that they may be more at hand, for the execution of the parts of their commiſſion; and withal, it is like by drawing a concourſe of people and tradeſmen to ſuch towns, it will be ſome help and commodity to the undertakers for things they ſhall ſtand in need of: And likewiſe, it will be a more ſafe place of receit and ſtore, wherein to unlade and depoſite ſuch proviſions as are after to be employed.

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The ſecond is, that your Majeſty would make a correſpondency between the commiſſion there, and a council of plantation here; wherein I warrant myſelf, by the precedent of the like council of plantation for *Virginia*; an enterprize in my opinion differing as much from this, as *Amadis de Gaul* differs from *Caeſar*'s commentaries. But when I ſpeak of a council of plantation, I mean ſome perſons choſen by way of reference, upon whom the labour may reſt, to prepare and report things to the council of eſtate here that concern that buſineſs. For although your Majeſty have a grave and ſufficient council in *Ireland*; from whom, and upon whom, the commiſſioners are to have aſſiſtance and dependence; yet that ſupplies not the purpoſe whereof I ſpeak. For conſidering, that upon the advertiſements, as well of the commiſſioners, as of the council of *Ireland* itſelf, there will be many occaſions to crave directions from your Majeſty, and your privy council here, which are buſied with a world of affairs; it cannot but give a greater expedition, and ſome better perfection unto ſuch directions and reſolutions, if the matters may be conſidered of aforehand, by ſuch, as may have a continual care of that cauſe. And it will be likewiſe a comfort and ſatisfaction to ſome principal undertakers, if they may be admitted of that council.

Secondly, There is a clauſe wherein the undertakers are reſtrained, that they ſhall execute the plantation in perſon; from which I muſt diſſent, if I will conſent with the grounds I have already taken. For it is not probable that men of great means and plentiful eſtates will indure the travel, diſeaſements, and adventures of going thither in perſon; but rather, I ſuppoſe, many will undertake portions as an advancement for their younger children or kinſfolks; or for the ſweetneſs of the expectation of a great bargain in the end, when it is overcome. And therefore, it is like they will employ ſons, kinſfolks, ſervants, or tenants, and yet be glad to have the eſtate in themſelves. And it may be ſome again will join their purſes together, and make as it were a partnerſhip or joint-adventure, and yet man forth ſome one perſon by conſent, for the executing of the plantation.

Thirdly, There is a main point, wherein I fear the project made hath too much of the line and compaſs, and will not be ſo natural and eaſy to execute, nor yet ſo politic and convenient: and that is, that the buildings ſhould be *ſparſim* upon every portion; and the caſtle or principal houſe ſhould draw the tenements and farms about it as it were into villages, hamlets, or endſhips; and that there ſhould be only four corporate towns for the artificers and tradeſmen.

My opinion is, that the building be altogether in towns, to be compounded as well of husbandries as of arts. My reaſons are,

First, When men come into a country vaſt, and void of all things neceſſary for the uſe of man's life, if they ſet up together in a place, one of them will the better ſupply the wants of the other: work-folks of all ſorts will be the more continually on work without loſs of time; when, if work fail in one place, they may have it faſt by; the ways will be made more paſſable for carriages to thoſe ſeats or towns, than they can be to a number of diſperſed ſolitary places; and infinite other helps and eaſements ſcarcely to be comprehended in cogitation will enſue in vicinity and ſociety of people; whereas if they build ſcattered, (as is projected) every man muſt have a *cornu-copia* in himſelf, for all things he muſt uſe, which cannot but breed much difficulty, and no leſs waſte.

Secondly, It will draw out of the inhabited country of *Ireland* proviſions and victuals, and many neceſſaries, becauſe they ſhall be ſure of utterance; whereas

whereas in the diſperſed habitations, every man muſt reckon only upon that that he brings with him, as they do in proviſions of ſhips.

THIRDLY, the charge of *Bawnes*, as they call them, to be made about every caſtle or houſe, may be ſpared, when the habitations ſhall be congregated only into towns.

AND laſtly, it will be a means to ſecure the country againſt future perils, in caſe of any revolt and defection; for by a ſlight fortification of no great charge, the danger of any attempts of kierns and ſword-men may be prevented; the omiſſion of which point, in the laſt plantation of *Munſter*, made the work of years to be but the ſpoil of days: and if any man think it will draw people too far off, from the grounds they are to labour, it is to be underſtood, that the number of the towns be encreaſed accordingly; and likewiſe, the ſituation of them be as in the center, in reſpect of the portions aſſigned to them: for in the champaign countries of *England*, where the habitation uſeth to be in towns, and not diſperſed, it is no new thing to go two miles off to plow part of their grounds; and two miles compaſs will take up a good deal of country.

THE fourth point, is a point wherein I ſhall differ from the project rather in quantity and proportion than in matter. There is allowed to the undertaker, within the five years of reſtraint, to alien a third part in fee farm, and to demiſe another third for forty years, which I fear will mangle the portions, and will be but a ſhift to make money of two parts; whereas I am of opinion, the more the firſt undertaker is forced to keep in his own hands, the more the work is like to proſper. For firſt, the perſon liable to the ſtate here to perform the plantation, is the immediate undertaker. Secondly, the more his profit dependeth upon the annual and ſpringing commodity, the more ſweetneſs he will find in putting forward manurance and husbanding of the grounds, and therefore is like to take more care of it. Thirdly, ſince the natives are excluded, I do not ſee that any perſons are like to be drawn over of that condition, as are like to give fines, and undertake the charge of building: for I am perſuaded that the people tranſported will conſiſt of gentlemen and their ſervants, and of labourers and hinds, and not of yeomen of any wealth; and therefore the charge of building, as well of the tenements and farms, as of the capital houſes themſelves, is like to reſt upon the principal undertakers, which will be recompenſed in the end to the full, and with much advantage, if they make no long eſtates or leaſes.

AND therefore this article to receive ſome qualification.

FIFTHLY, I ſhould think it requiſite that men of experience in that kingdom ſhould enter into ſome particular conſideration, of the charges and proviſions of all kinds that will be incident to the plantation; to the end, that thereupon ſome advice may be taken for the furniſhing and accommodating them moſt conveniently, aiding private induſtry and charge with publick care and order.

THUS I have expreſſed to your Majeſty thoſe ſimple and weak cogitations, which I have had in myſelf touching this cauſe, wherein I moſt humbly deſire your pardon, and gracious acceptance of my good affection and intention. For I hold it for a rule, that there belongeth to great Monarchs, from faithful ſervants, not only the tribute of duty, but the oblations of chearfulneſs of heart. And ſo I pray the Almighty to bleſs this great action, with your Majeſty's care; and your care with happy ſucceſs.

ADVICE

A D V I C E

TO THE

K I N G,

TOUCHING

Mr. *SUTTON*'s ESTATE.

May it pleaſe your MAJESTY,

I Find it a poſitive precept of the old law, that there ſhould be no ſacrifice, without ſalt: the moral whereof (beſides the ceremony) may be, that God is not pleaſed with the body of a good intention, except it be ſeaſoned with that ſpiritual wiſdom and judgment, as it be not eaſily ſubject to be corrupted and perverted: for ſalt, in the ſcripture, is a figure both of wiſdom and laſting. This cometh into my mind upon this act of Mr. *Sutton*, which ſeemeth to me as a ſacrifice without ſalt; having the materials of a good intention, but not powdered with any ſuch ordinances and inſtitutions as may preſerve the ſame from turning corrupt, or at leaſt from becoming unſavory, and of little uſe. For though the choice of the feoffees be of the beſt, yet neither can they always live; and the very nature of the work itſelf, in the vaſt and unfit proportions thereof, being apt to provoke a miſ-employment; it is no diligence of theirs, (except there be a digreſſion from that model) that can excuſe it from running the ſame way that gifts of like condition have heretofore done. For to deſign the *Charterhouſe*, a building fit for a prince's habitation, for an hoſpital, is all one as if one ſhould give in alms a rich embroidered cloak to a beggar. And certainly a man may ſee, *tanquam quae oculis cernuntur*, that if ſuch an edifice with ſix thouſand pounds revenue, be erected into one hoſpital, it will in ſmall time degenerate, to be made a preferment of ſome great perſon to be maſter, and he to take all the ſweet, and the poor to be ſtinted, and take but the crums; as it comes to paſs in divers hoſpitals of this realm, which have but the names of hoſpitals, and are only wealthy benefices in reſpect of the maſterſhip; but the poor, which is the *propter quid*, little relieved. And the like hath been the fortune of much of the alms of the *Roman* religion in their great foundations, which being begun in vain-glory and oſtentation, have had their judgment upon them, to end in corruption and abuſe. This meditation hath made me preſume to write theſe few lines to your Majeſty; being no better than good wiſhes, which your Majeſty's great wiſdom may make ſomething or nothing of.

WHEREIN I deſire to be thus underſtood, that if this foundation (ſuch as it is) be perfect and good in law, then I am too well acquainted with your Majeſty's diſpoſition, to adviſe any courſe of power or profit that is not grounded upon a right: nay farther, if the defects be ſuch as a court of equity may remedy and cure, then I wiſh that as St. *Peter*'s ſhadow did cure diſeaſes, ſo the very ſhadow of a good intention may cure defects of that nature. But

if there be a right, and birth-right planted in the heir, and not remediable by courts of equity, and that right be ſubmitted to your Majeſty, whereby it is both in your power and grace what to do; then I do wiſh that this rude maſs and chaos of a good deed were directed rather to a ſolid merit, and durable charity, than to a blaze of glory, that will but crackle a little in talk, and quickly extinguiſh.

And this may be done, obſerving the ſpecies of Mr. *Sutton*'s intent, though varying *in individuo:* for it appears that he had in notion a triple good, an hoſpital, and a ſchool, and maintaining of a preacher; which individuals refer to theſe three general heads; relief of power, advancement of learning, and propagation of religion. Now then if I ſhall ſet before your Majeſty, in every of theſe three kinds, what it is that is moſt wanting in your kingdom; and what is like to be the moſt fruitful and effectual uſe of ſuch a beneficence, and leaſt like to be perverted; that I think ſhall be no ill ſcope of my labour, how meanly ſoever performed; for out of variety repreſented, election may be beſt grounded.

Concerning the relief of the poor; I hold ſome number of hoſpitals, with competent endowments, will do far more good than one hoſpital of an exorbitant greatneſs: for though the one courſe will be the more ſeen, yet the other will be the more felt. For if your Majeſty erect many, beſides the obſerving the ordinary maxim, *bonum, quo communius, eo melius*, choice may be made of thoſe towns and places where there is moſt need, and ſo the remedy may be diſtributed as the diſeaſe is diſperſed. Again, greatneſs of reliefaccumulated in one place, doth rather invite a ſwarm and ſurcharge of poor, than relieve thoſe that are naturally bred in that place; like to ill-tempered medicines, that draw more humour to the part than they evacuate from it. But chiefly I rely upon the reaſon that I touched in the beginning, that in theſe great hoſpitals the revenues will draw the uſe, and not the uſe the revenues; and ſo through the maſs of the wealth, they will ſwiftly tumble down to a miſ-employment. And if any man ſay, that in the two hoſpitals in *London*, there is a precedent of greatneſs concurring with good employment; let him conſider that thoſe hoſpitals have annual governors, that they are under the ſuperior care and policy of ſuch a ſtate as the city of *London*; and chiefly, that their revenues conſiſt not upon certainties, but upon caſualties and free gifts; which gifts would be with-held, if they appeared once to be perverted; ſo as it keepeth them in a continual good behaviour and awe to employ them aright; none of which points do match with the preſent caſe.

The next conſideration may be, whether this intended hoſpital, as it hath a more ample endowment than other hoſpitals have, ſhould not likewiſe work upon a better ſubject than other poor; as that it ſhould be converted to the relief of maimed ſoldiers, decayed merchants, houſholders aged, and deſtitute churchmen, and the like; whoſe condition being of a better ſort than looſe people and beggars, deſerveth both a more liberal ſtipend and allowance, and ſome proper place of relief, not intermingled or coupled with the baſeſt ſort of poor; which project, though ſpecious, yet, in my judgment, will not anſwer the deſignment in the event in theſe our times. For certainly few men in any vocation, which have been ſomebody, and bear a mind ſomewhat according to the conſcience and remembrance of that they have been, will ever deſcend to that condition, as to profeſs to live upon alms and to become a corporation of declared beggars; but rather will chuſe to live obſcurely, and as it were to hide themſelves with ſome private friends; ſo that the end of ſuch an inſtitution will be, that it will make the place a receptacle

cle of the worſt, idleſt, and moſt diſſolute perſons of every profeſſion, and to become a cell of loiterers, and caſt ſerving-men, and drunkards, with ſcandal rather than fruit to the commonwealth. And of this kind I can find but one example with us, which is the alms-knights of *Windſor*; which particular would give a man ſmall encouragement to follow that precedent.

THEREFORE the beſt effect of hoſpitals is, to make the kingdom, if it were poſſible, capable of that law, that there be no beggar in *Iſrael*: for it is that kind of people that is a burthen, an eye-ſore, a ſcandal, and a ſeed of peril and tumult in the ſtate. But chiefly it were to be wiſhed, that ſuch a beneficence towards the relief of the poor were ſo beſtowed, as not only the mere and naked poor ſhould be ſuſtained, but alſo, that the honeſt perſon which hath hard means to live, upon whom the poor are now charged, ſhould be in ſome ſort eaſed: for that were a work generally acceptable to the kingdom, if the publick hand of alms might ſpare the private hand of tax: and therefore, of all other employments of that kind, I commend moſt houſes of relief and correction, which are mixt hoſpitals, where the impotent perſon is relieved, and the ſturdy beggar buckled to work; and the unable perſon alſo not maintained to be idle (which is ever joined with drunkenneſs and impurity,) but is ſorted with ſuch work as he can manage and perform; and where the uſes are not diſtinguiſhed, as in other hoſpitals; whereof ſome are for aged and impotent, and ſome for children, and ſome for correction of vagabonds; but are general and promiſcuous: ſo that they may take off poor of every ſort from the country as the country breeds them: and thus the poor themſelves ſhall find the proviſion, and other people the ſweetneſs of the abatement of the tax. Now if it be objected, that houſes of correction in all places have not done the good expected, (as it cannot be denied, but in moſt places they have done much good;) it muſt be remembered that there is a great difference between that which is done by the diſtracted government of juſtices of peace, and that which may be done by a ſettled ordinance, ſubject to a regular viſitation, as this may be. And beſides, the want hath been commonly in houſes of correction of a competent and certain ſtock, for the materials of the labour, which in this caſe may be likewiſe ſupplied.

CONCERNING the advancement of learning, I do ſubſcribe to the opinion of one of the wiſeſt and greateſt men of your kingdom: That for grammar ſchools there are already too many, and therefore no providence to add where there is exceſs: for the great number of ſchools which are in your Highneſs realm, doth cauſe a want, and doth cauſe likewiſe an overflow; both of them inconvenient, and one of them dangerous. For by means thereof they find want in the country and towns, both of ſervants for husbandry, and apprentices for trade: and on the other ſide, there being more ſcholars bred, than the ſtate can prefer and employ; and the active part of that life not bearing a proportion to the preparative, it muſt needs fall out, that many perſons will be bred unfit for other vocations, and unprofitable for that in which they are brought up; which fills the realm full of indigent, idle, and wanton people, which are but *materia rerum novarum*.

THEREFORE, in this point, I wiſh Mr. *Sutton*'s intention were exalted a degree; that that which he meant for teachers of children, your Majeſty ſhould make for teachers of men; wherein it hath been my ancient opinion and obſervation, that in the univerſities of this realm, (which I take to be of the beſt endowed univerſities of *Europe*) there is nothing more wanting towards the flouriſhing ſtate of learning, than the honourable and plentiful ſalaries of readers in arts and profeſſions. In which point, as your Majeſty's

Majeſty's bounty already hath made a beginning, ſo this occaſion is offered of God to make a proceeding. Surely, readers in the chair are as the parents in ſciences, and deſerve to enjoy a condition not inferior to their children that embrace the practical part; elſe no man will ſit longer in the chair, than till he can walk to a better preferment: and it will come to paſs as *Virgil* ſaith,

Ut patrum invalidi referant jejunia nati.

For if the principal readers, through the meanneſs of their entertainment, be but men of ſuperficial learning, and that they ſhall take their place but in paſſage, it will make the maſs of ſciences want the chief and ſolid dimenſion, which is depth; and to become but pretty and compendious habits of practice. Therefore I could wiſh that in both the univerſities, the lectures as well of the three profeſſions, divinity, law, and phyſick; as of the three heads of ſcience, philoſophy, arts of ſpeech, and the mathematicks; were raiſed in their penſions unto 100 *l. per annum* a-piece; which though it be not near ſo great as they are in ſome other places, where the greatneſs of the reward doth whiſtle for the ableſt men out of all foreign parts to ſupply the chair; yet it may be a portion to content a worthy and able man; if he be likewiſe contemplative in nature, as thoſe ſpirits are that are fitteſt for lectures. Thus may learning in your kingdom be advanced to a farther height; learning (I ſay) which under your Majeſty, the moſt learned of Kings, may claim ſome degree of elevation.

Concerning propagation of religion, I ſhall in few words ſet before your Majeſty three propoſitions; none of them devices of mine own, otherwiſe than that I ever approved them; two of which have been in agitation of ſpeech, and the third acted.

The firſt is a college for controverſies, whereby we ſhall not ſtill proceed ſingle, but ſhall, as it were, double our files; which certainly will be found in the encounter.

The ſecond is, a receipt (I like not the word ſeminary, in reſpect of the vain vows, and implicite obedience, and other things tending to the perturbation of ſtates, involved in that term) for converts to the reformed religion, either of youth or otherwiſe; for I doubt not but there are in *Spain*, *Italy*, and other countries of the papiſts, many whoſe hearts are touched with a ſenſe of thoſe corruptions, and an acknowledgment of a better way; which grace is many times ſmothered and choaked, through a worldly conſideration of neceſſity and want; men not knowing where to have ſuccour and refuge. This likewiſe, I hold a work of great piety, and a work of great conſequence; that we alſo may be wiſe in our generation; and that the watchful and ſilent night may be uſed as well for ſowing of good ſeed, as of tares.

The third is, the imitation of a memorable and religious act of Queen *Elizabeth*; who finding a part of *Lancaſhire* to be extremely backward in religion, and the benefices ſwallowed up in impropriations, did by decree in the duchy, erect four ſtipends of 100 *l. per annum* a-piece for preachers well choſen to help the harveſt; which have done a great deal of good in the parts where they have laboured. Neither do there want other corners in the realm, that would require for a time the like extraordinary help.

Thus have I briefly delivered unto your Majeſty, mine opinion, touching the employment of this charity; whereby that maſs of wealth which was in the owner, little better than a ſtack or heap of muck, may be ſpread over your kingdom to many fruitful purpoſes; your Majeſty planting and watering, and God giving the encreaſe.

THEOLO-

THEOLOGICAL WORKS.

A

CONFESSION OF FAITH.

Written by the

RIGHT HONOURABLE *FRANCIS BACON*, BARON of *VERULAM*, &c.

I Believe that nothing is without beginning but God; no nature, no matter, no ſpirit, but one, only, and the ſame God. That God, as he is eternally almighty, only wiſe, only good in his nature; ſo he is eternally Father, Son, and Spirit in perſons.

I BELIEVE that God is ſo holy, pure, and jealous, as it is impoſſible for him to be pleaſed in any creature, though the work of his own hands; ſo that neither angel, man, nor world, could ſtand, or can ſtand, one moment in his eyes, without beholding the ſame in the face of a Mediator; and therefore, that before him, with whom all things are preſent, the Lamb of God was ſlain before all worlds; without which eternal counſel of his, it was impoſſible for him to have deſcended to any work of creation; but he ſhould have enjoyed the bleſſed and individual ſociety of three perſons in Godhead for ever.

BUT that out of his eternal and infinite goodneſs and love, purpoſing to become a Creator, and to communicate to his creatures, he ordained in his eternal counſel, that one perſon of the Godhead ſhould be united to one nature, and to one particular of his creatures; that ſo, in the perſon of the Mediator, the true ladder might be fixed; whereby God might deſcend to his creatures, and his creatures might aſcend to God: ſo that God, by the reconcilement of the Mediator, turning his countenance towards his creatures,

(though not in equal light and degree) made way unto the diſpenſation of his moſt holy and ſecret will; whereby ſome of his creatures might ſtand, and keep their ſtate: others might poſſibly fall and be reſtored; and others might fall and not be reſtored to their eſtate, but yet remain in being, though under wrath and corruption: all with reſpect to the Mediator; which is the great myſtery and perfect center of all God's ways with his creatures; and unto which all his other works and wonders do but ſerve and refer.

That he choſe (according to his good pleaſure) man to be that creature, to whoſe nature the perſon of the eternal Son of God ſhould be united; and amongſt the generations of men, elected a ſmall flock, in whom (by the participation of himſelf) he purpoſed to expreſs the riches of his glory, all the miniſtration of angels, damnation of devils and reprobates, and univerſal adminiſtration of all creatures, and diſpenſation of all times; having no other end, but as the ways and ambages of God, to be further glorified in his ſaints, who are one with their head the Mediator, who is one with God.

That by the virtue of this his eternal counſel, he condeſcended of his own good pleaſure, and according to the times and ſeaſons to himſelf known, to become a Creator; and by his eternal Word created all things; and by his eternal Spirit doth comfort and preſerve them.

That he made all things in their firſt eſtate good, and removed from himſelf the beginning of all evil and vanity into the liberty of the creature; but reſerved in himſelf the beginning of all reſtitution to the liberty of his grace; uſing nevertheleſs, and turning the falling and defection of the creature (which to his preſcience was eternally known) to make way to his eternal counſel, touching a Mediator, and the work he purpoſed to accompliſh in him.

That God created ſpirits, whereof ſome kept their ſtanding, and others fell: he created heaven and earth, and all their armies and generations; and gave unto them conſtant and everlaſting laws, which we call nature; which is nothing but the laws of the creation; which laws nevertheleſs have had three changes or times, and are to have a fourth or laſt. The firſt, when the matter of heaven and earth was created without form: the ſecond, the interim of perfection of every day's work: the third, by the curſe, which notwithſtanding was no new creation: and the laſt, at the end of the world, the manner whereof is not yet fully revealed; ſo as the laws of nature, which now remain and govern inviolably till the end of the world, began to be in force when God firſt reſted from his works, and ceaſed to create; but received a revocation, in part, by the curſe; ſince which time they change not.

That notwithſtanding God hath reſted and ceaſed from creating ſince the firſt ſabbath, yet nevertheleſs, he doth accompliſh and fulfil his divine will in all things, great and ſmall, ſingular and general, as fully and exactly by providence as he could by miracle and new creation, though his working be not immediate and direct, but by compaſs; not violating nature, which is his own law upon the creature.

That at the firſt, the ſoul of man was not produced by heaven or earth, but was breathed immediately from God: ſo that the ways and proceedings of God with ſpirits are not included in nature; that is, in the laws of heaven and earth; but are reſerved to the law of his ſecret will and grace: wherein God worketh ſtill, and reſteth not from the work of redemption, as he reſteth from the work of creation; but continueth working till the end of the world: what time that work alſo ſhall be accompliſhed, and an eternal ſab-

bath

bath ſhall enſue. Likewiſe, that whenſoever God doth tranſcend the law of nature by miracles, (which may ever ſeem as new creations) he never cometh to that point or paſs, but in regard of the work of redemption, which is the greater, and whereto all God's ſigns and miracles do refer.

THAT God created man in his own image, in a reaſonable ſoul, in innocency, in free-will, and in ſovereignty: that he gave him a law and commandment, which was in his power to keep, but he kept it not: that man made a total defection from God, preſuming to imagine, that the commandments and prohibitions of God were not the rules of good and evil; but that good and evil had their own principles and beginnings, and luſted after the knowledge of thoſe imagined beginnings; to the end, to depend no more upon God's will revealed, but upon himſelf and his own light, as a God; than the which there could not be a ſin more oppoſite to the whole law of God: that yet nevertheleſs this great ſin was not originally moved by the malice of man, but was inſinuated by the ſuggeſtion and inſtigation of the devil, who was the firſt defected creature, and fell of malice, and not by temptation.

THAT upon the fall of man, death and vanity enter'd by the juſtice of God; and the image of God in man was defac'd; and heaven and earth which were made for man's uſe, were ſubdued to corruption by his fall; but then that inſtantly, and without intermiſſion of time, after the word of God's law, became through the fall of man, fruſtrate as to obedience, there ſucceeded the greater word of the promiſe, that the righteouſneſs of God might be wrought by faith.

THAT as well the law of God as the word of his promiſe, endure the ſame for ever: but that they have been revealed in ſeveral manners, according to the diſpenſation of times. For the law was firſt imprinted in that remnant of light of nature, which was left after the fall, being ſufficient to accuſe: then it was more manifeſtly expreſſed in the written law; and was yet more opened by the prophets: and laſtly, expounded in the true perfection by the Son of God the great Prophet and perfect interpreter; as alſo fulfiller of the law. That likewiſe the word of the promiſe was manifeſted and revealed: firſt, by immediate revelation and inſpiration; after by figures, which were of two natures: the one, the rites and ceremonies of the law; the other, the continual hiſtory of the old world, and church of the *Jews*; which though it be literally true, yet is it pregnant of a perpetual allegory and ſhadow of the work of the redemption to follow. The ſame promiſe or evangile was more clearly revealed and declared by the prophets, and then by the Son himſelf; and laſtly by the Holy Ghoſt, which illuminateth the church to the end of the world.

THAT in the fulneſs of time, according to the promiſe and oath, of a choſen lineage, deſcended the bleſſed ſeed of the woman, Jeſus Chriſt, the only begotten Son of God and Saviour of the world; who was conceived by the power and over-ſhadowing of the Holy Ghoſt, and took fleſh of the virgin *Mary*: that the Word did not only take fleſh, or was join'd to fleſh, but was made fleſh, though without confuſion of ſubſtance or nature: ſo as the eternal Son of God, and the ever bleſſed Son of *Mary* was one perſon: ſo one, as the bleſſed virgin may be truly and catholickly called, *Deipara*, the mother of God: ſo one, as there is no unity in univerſal nature, not that of the ſoul and body of man ſo perfect; for the three heavenly unities (whereof that is the ſecond) exceed all natural unities: that is to ſay, the unity of the three perſons in Godhead; the unity of God and man in Chriſt; and the unity of Chriſt

Chriſt and the church; the Holy Ghoſt being the worker of both theſe latter unities: for by the Holy Ghoſt was Chriſt incarnate and quickned in fleſh, and by the Holy Ghoſt is man regenerate and quickened in ſpirit.

THAT Jeſus, the Lord, became in the fleſh a ſacrificer, and a ſacrifice for ſin; a ſatisfaction and price to the juſtice of God; a meriter of glory and the kingdom; a pattern of all righteouſneſs; a preacher of the word which himſelf was; a finiſher of the ceremony; a corner-ſtone to remove the ſeparation between *Jew* and *Gentile*; an interceſſor for the church; a Lord of nature in his miracles; a conqueror of death and the power of darkneſs in his reſurrection; and that he fulfilled the whole counſel of God; performing all his ſacred offices, and anointing on earth; accompliſhed the whole work of the redemption and reſtitution of man to a ſtate ſuperior to the angels; (whereas the ſtate of man by creation was inferior,) and reconciled and eſtabliſhed all things according to the eternal will of the Father.

THAT in time Jeſus the Lord was born in the days of *Herod*, and ſuffered under the government of *Pontius Pilate*, being deputy of the *Romans*, and under the high prieſthood of *Caiaphas*, and was betrayed by *Judas* one of the twelve Apoſtles, and was crucified at *Hieruſalem*; and after a true and natural death, and his body laid in the ſepulchre, the third day he raiſed himſelf from the bonds of death, and aroſe and ſhewed himſelf to many choſen witneſſes, by the ſpace of divers days; and at the end of thoſe days, in the ſight of many, aſcended into heaven; where he continueth his interceſſion; and ſhall from thence at the day appointed come in the greateſt glory to judge the World.

THAT the ſufferings and merits of Chriſt, as they are ſufficient to do away the ſins of the whole world, ſo they are only effectual to thoſe which are regenerate by the Holy Ghoſt; who breatheth where he will of free grace; which grace, as a ſeed incorruptible, quickeneth the ſpirit of man, and conceiveth him anew a ſon of God and member of Chriſt: ſo that Chriſt, having man's fleſh, and man having Chriſt's ſpirit, there is an open paſſage and mutual imputation, whereby ſin and wrath was conveyed to Chriſt from man; and merit and life is conveyed to man from Chriſt: which ſeed of the Holy Ghoſt firſt figureth in us the image of Chriſt ſlain or crucified through a lively faith; and then reneweth in us the image of God in holineſs and charity; though both imperfectly, and in degrees far differing even in God's elect; as well in regard of the fire of the Spirit, as of the illumination thereof; which is more or leſs in a large proportion: as namely, in the church before Chriſt; which yet nevertheleſs was partaker of one and the ſame ſalvation with us; and of one and the ſame means of ſalvation with us.

THAT the work of the Spirit, though it be not tied to any means in heaven or earth, yet it is ordinarily diſpenſed by the preaching of the word; and adminiſtration of the ſacraments; the covenants of the fathers upon the children, prayer, reading; the cenſures of the church; the ſociety of the godly; the croſs and afflictions; God's benefits; his judgments upon others; miracles; the contemplation of his creatures: All which (though ſome be more principal) God uſeth as the means of vocation and converſion of his elect; not derogating from his power to call immediately by his grace, and at all hours and moments of the day (that is, of man's life) according to his good pleaſure.

THAT the word of God, whereby his will is revealed, continued in revelation and tradition until *Moſes*; and that the ſcriptures were from *Moſes*'s time to the times of the apoſtles and evangeliſts; in whoſe age, after the coming

coming of the Holy Ghoſt, the teacher of all truth, the book of the ſcriptures was ſhut and cloſed, ſo as not to receive any new addition; and that the church hath no power over the ſcriptures to teach or command any thing contrary to the writen word, but is as the ark, wherein the tables of the firſt teſtament were kept and preſerved: that is to ſay, the church hath only the cuſtody and delivery over of the ſcriptures committed unto the ſame; together with the interpretation of them, but ſuch only as is conceived from themſelves.

THAT there is an univerſal or catholick church of God, diſperſed over the face of the earth, which is Chriſt's ſpouſe, and Chriſt's body; being gathered of the fathers of the old world, of the church of the *Jews*, of the ſpirits of the faithful diſſolved, and the ſpirits of the faithful militant, and of the names yet to be born, which are already written in the book of life. That there is alſo a viſible church, diſtinguiſhed by the outward works of God's covenant, and the receiving of the holy doctrine, with the uſe of the myſteries of God, and the invocation and ſanctification of his holy name. That there is alſo an holy ſucceſſion in the prophets of the new teſtament and fathers of the church, from the time of the apoſtles and diſciples, which ſaw our Saviour in the fleſh unto the conſummation of the work of the miniſtry; which perſons are called from God by gift, or inward anointing; and the vocation of God followed by an outward calling and ordination of the church.

I BELIEVE, that the ſouls of ſuch as die in the Lord, are bleſſed, and reſt from their labours, and enjoy the ſight of God; yet ſo, as they are in expectation of a farther revelation of their glory in the laſt day. At which time all fleſh of man ſhall ariſe and be changed, and ſhall appear and receive from Jeſus Chriſt his eternal judgment; and the glory of the ſaints ſhall then be full; and the kingdom ſhall be given up to God the Father: From which time all things ſhall continue for ever in that being and ſtate, which then they ſhall receive. So as there are three times, (if times they may be called) or parts of eternity: The firſt, the time before beginnings, when the Godhead was only, without the being of any creature: the ſecond, the time of the myſtery, which continueth from the creation to the diſſolution of the world: and the third, the time of the revelation of the ſons of God; which time is the laſt, and is everlaſting without change.

AN

ADVERTISEMENT

TOUCHING THE

CONTROVERSIES

OF THE

CHURCH of *ENGLAND.*

IT is but ignorance, if any man find it ſtrange, that the ſtate of religion (eſpecially in the days of peace) ſhould be exerciſed and troubled with controverſies: for as it is the condition of the church militant to be ever under trials, ſo it cometh to paſs, that when the fiery trial of perſecution ceaſeth, there ſucceedeth another trial, which (as it were) by contrary blaſts of doctrine, doth ſift and winnow men's faith, and proveth whether they know God aright; even as that other of afflictions diſcovereth whether they love him better than the world. Accordingly was it foretold by Chriſt, ſaying, *That in the later times it ſhould be ſaid, loe here, loe there is Chriſt:* which is to be underſtood, not as if the very perſon of Chriſt ſhould be aſſumed and counterfeited, but his authority and pre-eminence (which is to be the truth it ſelf) ſhould be challenged and pretended. Thus have we read and ſeen to be fulfilled that which followeth, *Ecce in deſerto, ecce in penetralibus:* while ſome have ſought the truth in the conventicles and conciliables of hereticks and ſectaries; others in the external face and repreſentation of the church, and both ſorts have been ſeduced. Were it then that the controverſies of the church of *England* were ſuch, as they did divide the unity of the ſpirit, and not only ſuch as do unſwathe her of her bands, (the bands of peace) yet could it be no occaſion for any pretended catholick to judge us, or for any irreligious perſon to deſpiſe us; or if it be, it ſhall but happen to us all as it hath uſed to do; to them to be hardened, and to us to endure the good pleaſure of God. But now that our contentions are ſuch, as we need not ſo much that general canon and ſentence of Chriſt pronounced againſt hereticks; *Erratis, neſcientes ſcripturas, & poteſtatem Dei*; you do err, not knowing the ſcripture, and the power of God: as we need the admonition of St. *James, Let every man be ſwift to hear, ſlow to ſpeak, ſlow to wrath*; and that the wound is no way dangerous, except we poiſon it with our remedies: as the former ſort of men have leſs reaſon to make themſelves muſick in our diſcord, ſo I have good hope that nothing ſhall diſpleaſe our ſelves, which ſhall be ſincerely and modeſtly propounded for the appeaſing of theſe diſſenſions. For if any ſhall be offended at this voice, *vos eſtis fratres*; ye are brethren, why ſtrive ye? he ſhall give a great preſumption againſt himſelf, that he is the party that doth his brethren wrong.

THE controverſies themſelves I will not enter into, as judging, that the diſeaſe requireth rather reſt than any other cure. Thus much we all know and confeſs, that they be not of the higheſt nature, for they are not touching

ing the high myſteries of faith, ſuch as detained the churches for many years after their firſt peace, what time the hereticks moved curious queſtions, and made ſtrange anatomies of the natures and perſon of Chriſt; and the catholick fathers were compelled to follow them with all ſubtlety of deciſions and determinations to exclude them from their evaſions, and to take them in their labyrinths; ſo as it is rightly ſaid, *illis temporibus, ingenioſa res fuit, eſſe Chriſtianum*; in thoſe days it was an ingenious and ſubtle thing to be a Chriſtian.

Neither are they concerning the great parts of the worſhip of God, of which it is true, that *non ſervatur unitas in credendo, niſi eadem adſit in colendo*; there will be kept no unity in believing, except it be entertained in worſhipping; ſuch as were the controverſies of the eaſt and weſt churches touching images, and ſuch as are many of thoſe between the church of *Rome* and us; as about the adoration of the Sacrament, and the like; but we contend about ceremonies, and things indifferent, about the external policy and government of the church: in which kind, if we would but remember that the ancient and true bonds of unity are one faith, one baptiſm, and not one ceremony, one policy; if we would obſerve the league amongſt Chriſtians that is penned by our Saviour, *he that is not againſt us is with us*; if we could but comprehend that ſaying, *differentiae rituum commendant unitatem doctrinae*; the diverſities of ceremonies do ſet forth the unity of doctrine; and that *habet religio quae ſunt aeternitatis, habet quae ſunt temporis*; religion hath ſome things which belong to eternity, and ſome things which pertain to time: and if we did but know the virtue of ſilence, and ſlowneſs to ſpeak, commended by St. *James*, our controverſies of themſelves would cloſe up and grow together: but moſt eſpecially, if we would leave the overweaning and turbulent humours of theſe times, and revive the bleſſed proceeding of the Apoſtles and Fathers of the primitive church, which was in the like and greater caſes not to enter into aſſertions and poſitions, but to deliver counſels and advices, we ſhould need no other remedy at all; *ſi eadem conſulis, (frater) quae affirmas, conſulenti debetur reverentia, cum non debeatur fides affirmanti*; brother, if that which you ſet down as an aſſertion, you would deliver by way of advice, there were reverence due to your counſel, whereas faith is not due to your affirmation. St. *Paul* was content to ſpeak thus, *Ego, non Dominus*, I, and not the Lord: *Et, ſecundum conſilium meum*; according to my counſel. But now men do too lightly ſay, *non ego, ſed Dominus*; not I, but the Lord: yea, and bind it with an heavy denunciation of his judgments to terrify the ſimple, which have not ſufficiently underſtood out of *Solomon*, *That the cauſeleſs curſe ſhall not come.*

Therefore ſeeing the accidents are they which breed the peril, and not the things themſelves in their own nature, it is meet the remedies be applied unto them, by opening what it is on either part, that keepeth the wound green, and formalizeth both ſides to a farther oppoſition, and worketh an indiſpoſition in mens minds to be reunited, where no occaſion is pretended. But I find in reaſon, that peace is beſt built upon a repetition of wrongs; and in example, that the ſpeeches which have been made by the wiſeſt men, *de concordia ordinum*, have not abſtained from reducing to memory the extremities uſed on both parts; ſo as it is true which is ſaid, *Qui pacem tractat non repetitis conditionibus diſſidii, is magis animos hominum dulcedine pacis fallit, quam aequitate componit.*

And firſt of all, it is more than time that there were an end and ſurceaſe made of this immodeſt and deformed manner of writing lately entertained, whereby

whereby matter of religion is handled in the ſtyle of the ſtage. Indeed, bitter and earneſt writing muſt not haſtily be condemned; for men cannot contend coldly, and without affection, about things which they hold dear and precious. A politick man may write from his brain, without touch and ſenſe of his heart; as in a ſpeculation that appertaineth not unto him; but a feeling Chriſtian will expreſs in his words a character of hate or love. The later of which, as I could wiſh rather embraced, being more proper for theſe times, yet is the former warranted alſo by great examples.

But to leave all reverent and religious compaſſion towards evils, or indignation towards faults, and to turn religion into a comedy or ſatire; to ſearch and rip up wounds with a laughing countenance, to intermix ſcripture and ſcurrility ſometime in one ſentence, is a thing far from the reverence of a Chriſtian, and ſcant beſeeming the honeſt regard of a ſober man. *Non eſt major confuſio quam ſerii & joci.* There is no greater confuſion, than the confounding of jeſt and earneſt. The Majeſty of religion, and the contempt and deformity of things ridiculous, are things as diſtant as things may be. Two principal cauſes have I ever known of atheiſm, curious controverſies, and prophane ſcoffing: now that theſe two are joined in one, no doubt that ſect will make no ſmall progreſſion.

And here I do much eſteem the wiſdom and religion of that Biſhop which replied to the firſt pamphlet of this kind, who remembered that a fool was to be anſwered, but not by becoming like unto him; and conſidered the matter which he handled, and not the perſon with whom he dealt.

Job ſpeaking of the majeſty and gravity of a judge in himſelf, ſaith, *If I did ſmile, they believed it not:* as if he ſhould have ſaid, if I diverted, or glanced upon conceit of mirth, yet mens minds were ſo poſſeſſed with a reverence of the action in hand, as they could not receive it. Much more ought not this to be amongſt Biſhops and Divines diſputing about holy things. And therefore as much do I miſlike the invention of him who (as it ſeemeth) pleaſed himſelf in it as in no mean policy, that theſe men are to be dealt withal at their own weapons, and pledged in their own cup. This ſeemed to him as profound a device, as when the Cardinal *Sanſovino* counſelled *Julius* the ſecond to encounter the council of *Piſa* with the council of *Lateran*; or as lawful a challenge as Mr. *Jewel* made to confute the pretended Catholicks by the Fathers; but thoſe things will not excuſe the imitation of evil in another. It ſhould be contrariwiſe with us, as *Caeſar* ſaid, *Nil malo, quam eos ſimiles eſſe ſui, & me mei.* But now, *Dum de bonis contendimus, de malis conſentimus:* while we differ about good things, we agree in evil.

Surely, if I were aſked of theſe men, who were the more to be blamed? I ſhould percaſe remember the proverb, that the ſecond blow maketh the fray; and the ſaying of an obſcure fellow; *qui replicat, multiplicat*; he that replieth, multiplieth. But I would determine the queſtion with this ſentence; *alter principium malo dedit, alter modum abſtulit:* by the one means we have a beginning, and by the other we ſhall have none end.

And truly, as I do marvel that ſome of thoſe preachers which call for reformation (whom I am far from wronging ſo far, as to join them with theſe ſcoffers) do not publiſh ſome declaration, whereby they may ſatisfy the world, that they diſlike their cauſe ſhould be thus ſolicited; ſo I hope aſſuredly, that my lords of the clergy have none intelligence with this interlibelling, but do altogether diſallow that their credit ſhould be thus defended. For though I obſerve in one of them many gloſſes, whereby the man would inſinuate himſelf into their favours, yet I find it to be ordinary, that many preſſing

fing and fawning perſons do miſconjecture of the humours of men in authority, and many times, *Veneri immolant ſuem*, they ſeek to gratify them with that which they moſt diſlike: for I have great reaſon to ſatisfy myſelf touching the judgment of my lords the biſhops in this matter, by that which was written by one of them, which I mentioned before with honour. Nevertheleſs I note, there is not an indifferent hand carried towards theſe pamphlets as they deſerve; for the one ſort flieth in the dark, and the other is uttered openly; wherein I might adviſe that ſide out of a wiſe writer who hath ſet it down, that, *punitis ingeniis gliſcit authoritas.*

And indeed we ſee it ever falleth out, that the forbidden writing is always thought to be certain ſparks of a truth that fly up into the faces of thoſe that ſeek to choak it and tread it out; whereas a book authorized is thought to be but *temporis voces*, the language of the time. But in plain truth I do find (to mine underſtanding) theſe pamphlets as meet to be ſuppreſſed as the other. Firſt, becauſe as the former ſort doth deface the government of the church in the perſons of the Biſhops and Prelates, ſo the other doth lead into contempt the exerciſes of religion in the perſons of ſundry preachers; ſo as it diſgraceth an higher matter, though in the meaner perſon.

Next, I find certain indiſcreet and dangerous amplifications, as if the civil government itſelf of this ſtate had near loſt the force of her ſinews, and were ready to enter into ſome convulſion, all things being full of faction and diſorder, which is as unjuſtly acknowledged, as untruly affirmed: I know his meaning is to enforce this irreverent and violent impugning of the government of Biſhops, to be a ſuſpected forerunner of a more general contempt. And I grant there is a ſympathy between the eſtates, but no ſuch matter in the civil policy, as deſerveth ſo diſhonourable a taxation.

To conclude this point: As it were to be wiſhed that theſe writings had been abortive, and never ſeen the ſun; ſo the next is, ſince they be common abroad, that they be cenſured (by all that have underſtanding and conſcience) as the intemperate extravagancies of ſome light perſons. Yea farther, that men beware, except they mean to adventnre to deprive themſelves of all ſenſe of religion, and to pave their own hearts, and make them as the high way, how they may be converſant in them; and much more how they delight in that vein, but rather to turn their laughing into bluſhing, and to be aſhamed as of a ſhort madneſs, that they have in matters of religion taken their diſport and ſolace. But this perchance is of theſe faults which will be ſooneſt acknowledged; though I perceive, nevertheleſs, that there want not ſome who ſeek to blanch and excuſe it.

But to deſcend to a ſincere view and conſideration of the accidents and circumſtances of theſe controverſies, wherein either part deſerveth blame or imputation, I find generally, in cauſes of church matters, that men do offend in ſome or all of theſe five points.

The firſt is, the giving occaſion unto the controverſies; and alſo the inconſiderate and ungrounded taking of occaſion.

The next is, the extending and multiplying the controverſies to a more general oppoſition or contradiction than appeareth at the firſt propounding of them, when mens judgments are leaſt partial.

The third is, the paſſionate and unbrotherly practices and proceedings of both parts, towards the perſons each of others, for their diſcredit and ſuppreſſion.

THE fourth is, the courſes holden and entertained on either ſide, for the drawing of their partizans to a more ſtrait union within themſelves, which ever importeth a farther diſtraction of the entire body.

THE laſt is, the undue and inconvenient propounding, publiſhing, and debating of the controverſies. In which point the moſt palpable error hath been already ſpoken of, as that, which through the ſtrangeneſs and freſhneſs of the abuſe, firſt offereth itſelf to the conceits of all men.

NOW concerning the occaſion of the controverſies, it cannot be denied, but that the imperfections in the converſation and government of thoſe which have chief place in the church, have ever been principal cauſes and motives of ſchiſms and diviſions. For while the Biſhops and Governors of the church continue full of knowledge and good works; whilſt they feed the flock indeed; whilſt they deal with the ſecular ſtates in all liberty and reſolution according to the majeſty of their calling, and the precious care of ſouls impoſed upon them, ſo long the church is ſituated as it were upon an hill; no man maketh queſtion of it, or ſeeketh to depart from it; but when theſe virtues in the fathers and leaders of the church have loſt their light, and that they wax worldly, lovers of themſelves, and pleaſers of men, then men begin to grope for the church as in the dark, they are in doubt whether they be the ſucceſſors of the Apoſtles, or of the *Phariſees:* yea, howſoever they ſit in *Moſes* chair, yet they can never ſpeak, *tanquam authoritatem habentes*, as having authority, becauſe they have loſt their reputation in the conſciences of men, by declining their ſteps from the way which they trace out to others; ſo as men had need continually have ſounding in their ears this ſame, *nolite exire*, go not out; ſo ready are they to depart from the church upon every voice. And therefore it is truly noted by one that writeth as a natural man, that the hypocriſy of the fryers did, for a great time, maintain and bear out the irreligion of Biſhops and Prelates.

FOR this is the double policy of the ſpiritual enemy, either by counterfeit holineſs of life to eſtabliſh and authorize errors; or by corruption of manners, to diſcredit and draw in queſtion truth and things lawful. This concerneth my lords the biſhops, unto whom I am witneſs to myſelf, that I ſtand affected as I ought: No contradiction hath ſupplanted in me the reverence that I owe to their calling; neither hath any detraction or calumny imbaſed mine opinion of their perſons. I know ſome of them whoſe names are moſt pierced with theſe accuſations, to be men of great virtues; although the indiſpoſition of the times, and the want of correſpondence, many ways is enough to fruſtrate the beſt endeavours in the edifying of the church. And for the reſt, generally, I can condemn none. I am no judge of them that belong to ſo high a maſter; neither have I two witneſſes. And I know it is truly ſaid of fame, that

——*Pariter facta, atque infecta canebat.*

THEIR taxations ariſe not all from one coaſt; they have many and different enemies ready to invent ſlander, more ready to amplify it, and moſt ready to believe it. And *Magnes mendacii credulitas*; credulity is the adamant of lyes. But if any be, againſt whom the ſupreme Biſhop hath not a few things, but many things; if any have loſt his firſt love; if any be neither hot nor cold; if any have ſtumbled too fondly at the threſhold, in ſuch ſort that he cannot ſit well, that entered ill; it is time they return whence they are fallen, and confirm the things that remain.

GREAT

GREAT is the weight of this fault; *Et eorum cauſa abhorrebant homines a ſacrificio Domini:* and for their cauſe did men abhor the adoration of God. But howſoever it be, thoſe which have ſought to defame them and caſt contempt upon them, are not to be excuſed.

IT is the precept of *Solomon* that the rulers be not reproached; no, not in our thought: but that we draw our very conceit into a modeſt interpretation of their doings. The holy angel would give no ſentence of blaſphemy againſt the common ſlanderer, but ſaid, *Increpet te Dominus; the Lord rebuke thee.* The Apoſtle St. *Paul*, though againſt him that did pollute ſacred juſtice with tyrannous violence, he did juſtly denounce the judgment of God, ſaying; *percutiet te Dominus:* the Lord will ſtrike thee; yet in ſaying, *paries dealbate*, he thought he had gone too far, and retracted it: whereupon a learned father ſaid, *ipſum quamvis inane nomen, & umbram ſacerdotis expavit.*

THE ancient councils and ſynods (as is noted by the eccleſiaſtical ſtory) when they deprived any Biſhop, never recorded the offence; but buried it in perpetual ſilence: only *Cham* purchaſed his curſe by revealing his father's diſgrace; and yet a much greater fault is it to aſcend from their perſon to their calling, and draw that in queſtion. Many good fathers ſpake rigorouſly and ſeverely of the unworthineſs of Biſhops; as if preſently it did forfeit, and ceaſe their office. One ſaith, *ſacerdotes nominamur, & non ſumus:* we are called prieſts, but prieſts we are not. Another ſaith, *niſi bonum opus amplectaris, epiſcopus eſſe non potes*: except thou undertake the good work, thou canſt not be a Biſhop; yet they meant nothing leſs than to move doubt of their calling or ordination.

THE ſecond occaſion of controverſies, is the nature and humour of ſome Men. The church never wanteth a kind of perſons which love the ſalutation of *Rabbi*, *Maſter*; not in ceremony or complement, but in an inward authority which they ſeek over mens minds, in drawing them to depend upon their opinions, and to ſeek knowledge at their lips. Theſe men are the true ſucceſſors of *Diotrephes*, the lover of pre-eminence, and not Lord Biſhops. Such ſpirits do light upon another ſort of natures, which do adhere to theſe men; *quorum gloria in obſequio*; ſtiff followers, and ſuch as pretend zeal marvelouſly for thoſe whom they have choſen for their maſters. This later ſort, for the moſt part, are men of young years, and ſuperficial underſtanding, carried away with partial reſpects of perſons; or with the enticing appearance of godly names and pretences: *Pauci res ipſas ſequuntur, plures nomina rerum, plurima nomina magiſtrorum*; few follow the things themſelves, more the names of the things, and moſt the names of their maſters.

ABOUT theſe general affections are wreathed and interlaced accidental and private emulations and diſcontentments, all which together, break forth into contentions; ſuch as either violate truth, ſobriety, or peace. Theſe generalities apply themſelves. The univerſities are the ſeat or the continent of this diſeaſe; whence it hath been, and is derived into the reſt of the realm. There men will no longer be *è numero* of the number. There do others ſide themſelves before they know their right hand from their left: ſo it is true which is ſaid, *tranſeunt ab ignorantia ad praejudicium*, they skip from ignorance to a prejudicate opinion, and never take a ſound judgment in their way. But as it is well noted, *inter juvenile judicium & ſenile praejudicium, omnis veritas corrumpitur:* when men are indifferent, and not partial, then their judgment is weak and unripe, through want of years: and when it groweth to ſtrength and ripeneſs, by that time it is foreſtalled with ſuch a number of prejudicate opinions,

opinions, as it is made unprofitable: so as between these two all truth is corrupted. In the mean while, the honourable names of sincerity, reformation, and discipline are put in the fore ward: so as contentions and evil zeals cannot be touched, except these holy things be thought first to be violated. But howsoever, they shall infer the solicitation for the peace of the church to proceed from carnal sense, yet I will conclude ever with the Apostle *Paul: Cum sit inter vos zelus & contentio, nonne carnales estis?* While there is amongst you zeal and contention, are ye not carnal? And howsoever they esteem the compounding of controversies to savour of man's wisdom and human policy, and think themselves led by the wisdom which is from above; yet I say with St. *James: Non est ista sapientia de sursum descendens, sed terrena, animalis, diabolica: Ubi enim zelus & contentio, ibi inconstantia & omne opus pravum.* Of this inconstancy it is said by a learned father: *Procedere volunt non ad perfectionem, sed ad permutationem*; they seek to go forward still, not to perfection, but to change.

The third occasion of controversies I observe to be an extreme and unlimited detestation of some former heresy or corruption of the church already acknowledged and convicted. This was the cause that produced the heresy of *Arius*, grounded especially upon detestation of gentilism, lest the Christians should seem by the assertion of the equal Divinity of our Saviour *Christ*, to approach unto the acknowledgment of more Gods than one. The detestation of the heresy of *Arius* produced that of *Sabellius*; who holding for execrable the dissimilitude which *Arius* pretended in the Trinity, fled so far from him as he fell upon that other extremity to deny the distinction of persons; and to say they were but only names of several offices and dispensations. Yea, most of the heresies and schisms of the church have sprung up of this root; while men have made it as it were their scale, by which to measure the bounds of the most perfect religion; taking it by the farthest distance from the error last condemned. These be *posthumi haeresium filii*; heresies that arise out of the ashes of other heresies that are extinct and amortized.

This manner of apprehension doth in some degree possess many in our times. They think it the true touchstone to try what is good and evil, by measuring what is more or less opposite to the institutions of the church of *Rome*, be it ceremony, be it policy or government; yea, be it other institutions of greater weight, that is ever most perfect which is removed most degrees from that church; and that is ever polluted and blemished, which participateth in any appearance with it. This is a subtile and dangerous conceit for men to entertain; apt to delude themselves, more apt to seduce the people, and most apt of all to calumniate their adversaries. This surely (but that a notorious condemnation of that position was before our eyes) had long since brought us to the re-baptization of children, baptized according to the pretended catholick religion: for I see that which is a matter of much like reason, which is the re-ordaining of priests, is a matter already resolutely maintained. It is very meet that men beware how they be abused by this opinion; and that they know that it is a consideration of much greater wisdom and sobriety to be well advised, whether in general demolition of the institutions of the church of *Rome*, there were not (as men's actions are imperfect) some good purged with the bad, rather than to purge the church, as they pretend every day anew; which is the way to make a wound in the bowels, as is already begun.

The

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THE fourth and laſt occaſion of theſe controverſies, (a matter which did alſo trouble the church in former times) is the partial affectation and imitation of foreign churches. For many of our men (during the time of perſecution and ſince) having been converſant in churches abroad, and received a great impreſſion of the form of government there ordained, have violently ſought to intrude the ſame upon our church. But I anſwer: *Conſentiamus in eo quod convenit, non in eo quod receptum eſt*; let us agree in this, that every church do that which is convenient for the ſtate of itſelf, and not in particular cuſtoms. Although their churches had received the better form, yet many times it is to be ſought, *non quod optimum, ſed e bonis quid proximum*; not that which is beſt, but of good things which is the beſt and readieſt to be had. Our church is not now to plant; it is ſettled and eſtabliſhed. It may be, in civil ſtates a republick is a better policy than a kingdom: yet, God forbid that lawful kingdoms ſhould be tied to innovate and make alterations. *Qui mala introducit, voluntatem Dei oppugnat revelatam in verbo; qui nova introducit, voluntatem Dei oppugnat revelatam in rebus:* he that bringeth in evil cuſtoms reſiſteth the will of God revealed in his word; he that bringeth in new things reſiſteth the will of God revealed in the things themſelves. *Conſule providentiam Dei cum verbo Dei:* take counſel of the providence of God, as well as of his word. Neither yet do I admit that their form, although it were poſſible and convenient, is better than ours, if ſome abuſes were taken away. The parity and equality of miniſters is a thing of wonderful great confuſion, and ſo is an ordinary government by ſynods, which doth neceſſarily enſue upon the other.

IT is hard in all cauſes, but eſpecially in religion, when voices ſhall be numbred and not weighed: *Equidem*, ſaith a wiſe father, *ut vere quod res eſt ſcribam, prorſus decrevi fugere omnem conventum epiſcoporum; nullius enim concilii bonum exitum unquam vidi; concilia enim non minuunt mala, ſed augent potius:* to ſay the truth, I am utterly determined never to come to any council of biſhops; for I never yet ſaw good end of any council; for councils abate not ill things, but rather increaſe them. Which is to be underſtood not ſo much of general councils as of ſynods, gathered for the ordinary government of the church. As for the deprivation of biſhops, and ſuch like cauſes, this miſchief hath taught the uſe of archbiſhops, patriarchs and primates; as the abuſe of them ſince hath taught men to miſlike them.

BUT it will be ſaid; look to the fruits of the churches abroad and ours. To which I ſay, that I beſeech the Lord to multiply his bleſſings and graces upon thoſe churches an hundred fold. But yet it is not good, that we fall on the numbring of them; it may be our peace hath made us more wanton: it may be alſo, (though I would be loth to derogate from the honour of thoſe churches, were it not to remove ſcandals) that their fruits are as torches in the dark, which appear greateſt afar off. I know they may have ſome ſtrict orders for the repreſſing of ſundry exceſſes: But when I conſider of the cenſures of ſome perſons, as well upon particular men as upon churches, I think on the ſaying of a *Platoniſt*, who ſaith, *certe vitia iraſcibilis partis animae ſunt gradu praviora, quam concupiſcibilis, tametſi occultiora:* a matter that appeared much by the ancient contentions of biſhops. God grant that we may contend with other churches, as the vine with the olive, which of us ſhall bear the beſt fruit; and not as the briar with the thiſtle, which of us is moſt unprofitable. And thus much touching the occaſions of theſe controverſies.

Now, briefly to ſet down the growth and progreſſion of the controverſies; whereby will be verified the ſaying of *Solomon: That the courſe of contention is to be ſtopped at the firſt; being elſe as the waters, which if they gain a breach, it will hardly ever be recovered.*

It may be remembered, that on that part, which call for reformation, was propounded firſt, ſome diſlike of certain ceremonies, ſuppoſed to be ſuperſtitious; ſome complaint of dumb miniſters who poſſeſs rich benefices; and ſome invectives againſt the idle and monaſtical continuance within the univerſities, by thoſe who had livings to be reſident upon, and ſuch like abuſes: Thence they went on to condemn the government of biſhops as an hierarchy remaining to us, of the corruptions of the *Roman* church, and to except to ſundry inſtitutions in the church, as not ſufficiently delivered from the pollutions of former times.

And laſtly, they are advanced to define of an only and perpetual form of policy in the church; which without conſideration of poſſibility and foreſight of peril, and perturbation of the church and ſtate, muſt be erected and planted by the magiſtrate. Here they ſtay. Others not able to keep footing in ſo ſteep ground, deſcend farther; that the ſame muſt be entered into and accepted of the people at their peril without the attending of the eſtabliſhment of authority. And ſo in the mean time they refuſe to communicate with us, reputing us to have no church. This has been the progreſſion of that ſide: I mean of the generality. For I know, ſome perſons (being of the nature, not only to love extremities, but alſo to fall to them without degrees) were at the higheſt ſtrain at the firſt.

The other part, which maintaineth the preſent government of the church, hath not kept one tenour neither. Firſt, thoſe ceremonies which were pretended to be corrupt, they maintained to be things indifferent, and oppoſed the examples of the good times of the church to that challenge which was made unto them; becauſe they were uſed in the later ſuperſtitious times. Then were they alſo content mildly to acknowledge many imperfections in the church: as tares coming up amongſt the corn; which yet (according to the wiſdom taught by our Saviour) were not with ſtrife to be pulled up, leſt it might ſpoil and ſupplant the good corn, but to grow on together till the harveſt. After they grew to a more abſolute defence and maintenance of all the orders of the church, and ſtiffly to hold, that nothing was to be innovated; partly becauſe it needed not, partly becauſe it would make a breach upon the reſt. Hence (exaſperated through contentions) they are fallen to a direct condemnation of the contrary part; as of a ſect. Yea, and ſome indiſcreet perſons have been bold in open preaching, to uſe diſhonourable and derogatory ſpeech and cenſure of the churches abroad; and that ſo far, as ſome of our men (as I have heard) ordained in foreign parts, have been pronounced to be no lawful miniſters. Thus we ſee the beginnings were modeſt, but the extremes are violent; ſo as there is almoſt as great a diſtance now of either ſide from it ſelf, as was at the firſt of one from the other. And ſurely, though my meaning and ſcope be not (as I ſaid before) to enter into the controverſies themſelves, yet I do admoniſh the maintainers of the abovenamed diſcipline, to weigh and conſider ſeriouſly and attentively, how near they are unto them, with whom I know they will not join. It is very hard to affirm, that the diſcipline which they ſay we want, is one of the eſſential parts of the worſhip of God; and not to affirm withal, that the people themſelves, upon peril of ſalvation, without ſtaying for the magiſtrate, are to gather themſelves into it. I demand, if a civil ſtate ſhould receive the preaching

ing of the word and baptiſm, and interdict and exclude the ſacrament of the Lord's ſupper, were not men bound upon danger of their ſouls to draw themſelves to congregations, wherein they might celebrate this myſtery, and not to content themſelves with that part of God's worſhip which the magiſtrate had authoriſed? This I ſpeak, not to draw them into the miſlike of others, but into a more deep conſideration of themſelves: *Fortaſſe non redeunt, quia ſuum progreſſum non intelligunt.*

AGAIN, to my lords the biſhops I ſay, that it is hard for them to avoid blame, (in the opinion of an indifferent perſon) in ſtanding ſo preciſely upon altering nothing: *leges, novis legibus non recreatae, aceſcunt*; laws not refreſhed with new laws, wax ſour. *Qui mala non permutat, in bonis non perſeverat*; without change of ill, a man cannot continue the good. To take away many abuſes, ſupplanteth not good orders, but eſtabliſheth them. *Moroſa moris retentio, res turbulenta eſt, aeque ac novitas*; a contentious retaining of cuſtom is a turbulent thing as well as innovation. A good huſband is ever pruning in his vineyard or his field; not unſeaſonably indeed, not unſkilfully, but lightly; he findeth ever ſomewhat to do. We have heard of no offers of the biſhops of bills in parliament; which no doubt proceeding from them to whom it properly belongeth, would have every where received acceptation. Their own conſtitutions and orders have reformed them little. Is nothing amiſs? Can any man defend the uſe of excommunication as a baſe proceſs to lackey up and down for duties and fees; it being a precurſory judgment of the later day?

Is there no mean to train and nurſe up miniſters? (for the yield of the univerſities will not ſerve, though they were never ſo well governed:) to train them, I ſay, not to preach, (for that every man confidently adventureth to do) but to preach ſoundly, and to handle the ſcriptures with wiſdom and judgment? I know propheſying was ſubject to great abuſe, and would be more abuſed now; becauſe heat of contentions is encreaſed: but I ſay, the only reaſon of the abuſe was, becauſe there was admitted to it a popular auditory, and it was not contained within a private conference of miniſters. Other things might be ſpoken of. I pray God to inſpire the biſhops with a fervent love and care of the people; and that they may not ſo much urge things in controverſy, as things out of controverſy; which all men confeſs to be gracious and good. And thus much for the ſecond point.

Now, as to the third point of unbrotherly proceeding on either part, it is directly contrary to my purpoſe to amplify wrongs: it is enough to note and number them; which I do alſo, to move compaſſion and remorſe on the offending ſide, and not to animate challengers and complaints on the other. And this point (as reaſon is) doth chiefly touch that ſide which can do moſt: *Injuriae potentiorum ſunt*; injuries come from them that have the upper hand.

THE wrongs of them which are poſſeſſed of the government of the church towards the other, may hardly be diſſembled or excuſed: they have charged them as though they denied tribute to *Caeſar*, and withdrew from the civil magiſtrate the obedience which they have ever performed and taught. They have ſorted and coupled them with the family of love, whoſe hereſies they have laboured to deſtroy and confute. They have been ſwift of credit to receive accuſations againſt them, from thoſe that have quarrelled with them, but for ſpeaking againſt ſin and vice. Their accuſations and inquiſitions have been ſtrict, ſwearing men to blanks and generalities, (not included within compaſs of matter certain, which the party which is to take the oath may

may comprehend) which is a thing captious and ſtrainable. Their urging of ſubſcription to their own articles, is but *laceſſere, & irritare morbos eccleſiae*, which otherwiſe would ſpend and waſte themſelves. *Non conſenſum quaerit ſed diſſidium, qui, quod factis praeſtatur, in verbis exigit:* He ſeeketh not unity, but diviſion, which exacteth that in words, which men are content to yield in action. And it is true, there are ſome which (as I am perſuaded) will not eaſily offend by inconformity, who notwithſtanding make ſome conſcience to ſubſcribe; for they know this note of inconſtancy and defection, from that which they have long held, ſhall diſable them to do that good which otherwiſe they might do: for ſuch is the weakneſs of many, that they think their miniſtry ſhould be thereby diſcredited. As for their eaſy ſilencing of them in ſuch great ſcarcity of preachers, it is to puniſh the people, and not them. Ought they not (I mean the biſhops) to keep one eye open, to look upon the good that thoſe men do, not to fix them both upon the hurt that they ſuppoſe cometh by them? Indeed, ſuch as are intemperate and incorrigible, God forbid they ſhould be permitted to preach: but ſhall every inconſiderate word, ſometimes captiouſly watched, and for the moſt part hardly enforced, be as a forfeiture of their voice and gift in preaching? As for ſundry particular moleſtations, I take no pleaſure to recite them. If a miniſter ſhall be troubled for ſaying in baptiſm, *do you believe*, for *doſt thou believe?* If another ſhall be called in queſtion for praying for her Majeſty, without the additions of her ſtyle; whereas the very form of prayer in the book of Common-Prayer hath thy ſervant *Elizabeth*, and no more: If a third ſhall be accuſed upon theſe words uttered touching the controverſies, *tollatur lex, & fiat certamen*; (whereby was meant, that the prejudice of the law removed, either reaſons ſhould be equally compared) of calling the people to ſedition and mutiny; as if he had ſaid, away with the law, and try it out with force: If theſe, and other like particulars be true, which I have but by rumour, and cannot affirm; it is to be lamented that they ſhould labour amongſt us with ſo little comfort. I know reſtrained governments are better than remiſs; and I am of his mind that ſaid, better is it to live where nothing is lawful, than where all things are lawful. I diſlike that laws ſhould not be continued, or diſturbers be unpuniſhed: but laws are likened to the grape, that being too much preſſed yields an hard and unwholeſome wine. Of theſe things I muſt ſay; *ira viri non operatur juſtitiam Dei*; the wrath of man worketh not the righteouſneſs of God.

As for the injuries of the other part, they be *ictus inermes*; as it were headleſs arrows: they be fiery and eager invectives, and (in ſome fond men) uncivil and irreverent behaviour towards their ſuperiors. This laſt invention alſo which expoſeth them to deriſion and obloquy by libels, chargeth not (as I am perſuaded) the whole ſide: neither doth that other which is yet more odious, practiſed by the worſt ſort of them; which is to call in (as it were to their aids,) certain mercenary bands, which impugn biſhops, and other eccleſiaſtical dignities, to have the ſpoil of their endowments and livings; of thoſe I cannot ſpeak too hardly. It is an intelligence between incendiaries and robbers, the one to fire the houſe, the other to rifle it.

The fourth point wholly pertaineth to them which impugn the preſent eccleſiaſtical government, who although they have not cut themſelves off from the body and communion of the church; yet do they affect certain cognizances and differences, wherein they ſeek to correſpond amongſt themſelves, and to be ſeparate from othets. And it is truly ſaid, *tam ſunt mores quidam ſchiſmatici, quam dogmata ſchiſmatica*; there be as well ſchiſmatical faſhions

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as opinions. First, they have impropriated unto themselves the names of zealous, sincere, and reformed; as if all others were cold minglers of holy things and prophane, and friends of abuses. Yea, be a man endued with great virtues, and fruitful in good works; yet if he concur not with them, they term him (in derogation) a civil and moral man, and compare him to *Socrates*, or some heathen philosopher: whereas the wisdom of the scriptures teacheth us otherwise; namely, to judge and denominate men religious according to their works of the second table; because they of the first are often counterfeit, and practised in hypocrisy. So St. *John* saith, *that a man doth vainly boast of loving God whom he never saw, if he love not his brother whom he hath seen.* And St. *James saith, this is true religion to visit the fatherless and the widow.* So as that which is with them but philosophical and moral, is in the Apostle's phrase, *true Religion and Christianity.* As in affection they challenge the said virtues of zeal and the rest; so in knowledge they attribute unto themselves light and perfection. They say, the church of *England* in King *Edward*'s time, and in the beginning of her Majesty's reign, was but in the cradle; and the Bishops in those times did somewhat grope for day-break, but that maturity and fulness of light proceedeth from themselves. So *Sabinius*, Bishop of *Heraclea*, a *Macedonian* heretick, said, that the fathers in the council of *Nice* were but infants and ignorant men: that the church was not so perfect in their decrees as to refuse that farther ripeness of knowledge which time had revealed. And as they censure virtuous men by the names of civil and moral, so do they censure men truly and godly wise (who see into the vanity of their affections) by the name of politicks; saying, that their wisdom is but carnal and savouring of man's brain. So likewise if a preacher preach with care and meditation; (I speak not of the vain scholastical manner of preaching, but soundly indeed, ordering the matter he handleth distinctly for memory, deducting and drawing it down for direction, and authorizing it with strong proofs and warrants:) they censure it as a form of speaking, not becoming the simplicity of the gospel, and refer it to the reprehension of St. *Paul*, speaking of the enticing speech of man's wisdom.

Now for their own manner of preaching, what is it? Surely they exhort well, and work compunction of mind, and bring men well to the question, *Viri, fratres, quid faciemus?* But that is not enough, except they resolve the question: they handle matters of controversy weakly, and *obiter*, and as before a people that will accept of any thing. In doctrine of manners there is little but generality and repetition. The Word (the bread of life) they toss up and down, they break it not: they draw not their directions down *ad casus conscientiae*; that a man may be warranted in his particular actions whether they be lawful or not; neither indeed are many of them able to do it, what through want of grounded knowledge, what through want of study and time. It is a compendious and easy thing to call for the observation of the sabbath-day, or to speak against unlawful gain; but what actions and works may be done upon the sabbath, and what not; and what courses of gain are lawful, and in what cases: to set this down, and to clear the whole matter with good distinctions and decisions, is a matter of great knowledge and labour, and asketh much meditation and conversing in the scriptures, and other helps which God hath provided and preserved for instruction.

Again, they carry not an equal hand in teaching the people their lawful liberty, as well as their restraints and prohibitions: but they think a man cannot go too far in that that hath a shew of a commandment.

THEY forget that there are ſins on the right hand, as well as on the left; and that the word is double-edged, and cutteth on both ſides, as well the profane tranſgreſſions, as the ſuperſtitious obſervances. Who doubteth but that it is as unlawful to ſhut where God hath opened, as to open where God hath ſhut; to bind where God hath looſed, as to looſe where God hath bound? Amongſt men it is commonly as ill taken to turn back favours, as to diſobey commandments. In this kind of zeal (for example) they have pronounced generally, and without difference, all untruths unlawful; notwithſtanding, that the midwives are directly reported to have been bleſſed for their excuſe: and *Rahab* is ſaid by faith to have concealed the ſpies; and *Solomon*'s ſelected judgment proceeded upon a ſimulation: and our Saviour, the more to touch the hearts of the two diſciples with an holy dalliance, made as if he would have paſſed *Emmaus*. Farther, I have heard ſome ſermons of mortification, which, I think with very good meaning, they have preached out of their own experience and exerciſe, and things in private counſels not unmeet; but ſurely no ſound conceits, much like to *Parſon*'s reſolution, or not ſo good; apt to breed in men rather weak opinions and perplexed deſpairs, than filial and true repentance which is ſought.

ANOTHER point of great inconvenience and peril, is to entitle the people to hear controverſies, and all kinds of doctrine. They ſay no part of the counſel of God is to be ſuppreſſed, nor the people defrauded: ſo as the difference which the Apoſtle maketh between milk and ſtrong meat is confounded; and his precept, that the weak be not admitted unto queſtions and controverſies, taketh no place.

BUT moſt of all is to be ſuſpected, as a ſeed of farther inconvenience, their manner of handling the ſcriptures; for whilſt they ſeek expreſs ſcripture for every thing; and that they have, in a manner, deprived themſelves and the church of a ſpecial help and ſupport, by embaſing the authority of the fathers, they reſort to naked examples, conceited inferences, and forced alluſions, ſuch as do ruin all certainty of religion.

ANOTHER extremity, is the exceſſive magnifying of that, which though it be a principal and moſt holy inſtitution, yet hath its limits as all things elſe have. We ſee whereſoever, in a manner, they find in the ſcriptures the word ſpoken of, they expound it of preaching; they have made it, in a manner, of the eſſence of the ſacrament of the Lord's ſupper, to have a ſermon precedent; they have, in a ſort, annihilated the uſe of liturgies, and forms of divine ſervice, although the houſe of God be denominated of the principal, *domus orationis*, a houſe of prayer, and not a houſe of preaching. As for the life of the good monks and hermits in the primitive church, I know they will condem a man as half a papiſt, if he ſhould maintain them as other than prophane, becauſe they heard no ſermons. In the mean time, what preaching is, and who may be ſaid to preach, they move no queſtion; but (as far as I ſee) every man that preſumeth to ſpeak in chair, is accounted a preacher. But I am aſſured, that not a few that call hotly for a preaching miniſtry, deſerve to be the firſt themſelves that ſhould be expelled. All which errors and miſproceedings they do fortify and intrench by an addicted reſpect to their own opinions, and an impatience to hear contradiction or argument; yea, I know ſome of them that would think it a tempting of God, to hear or read what may be ſaid againſt them; as if there could be a *quod bonum eſt, tenete*; without an *omnia probate*, going before.

THIS may ſuffice to offer unto themſelves a thought and conſideration, whether in theſe things they do well or no? and to correct and aſſuage the partiality

tiality of their followers. For as for any man that ſhall hereby enter into a contempt of their miniſtry, it is but his own hardneſs of heart. I know the work of exhortation doth chiefly reſt upon theſe men, and they have zeal and hate of ſin: But again, let them take heed that it be not true which one of their adverſaries ſaid, that they have but two ſmall wants, knowledge, and love. And ſo I conclude this point.

The laſt point, touching the due publiſhing and debating of theſe controverſies, needeth no long ſpeech. This ſtrange abuſe of antiques and paſquils hath been touched before: ſo likewiſe I repeat that which I ſaid, that a character of love is more proper for debates of this nature, than that of zeal: As for all direct or indirect glances or levels at mens perſons, they were ever in theſe cauſes diſallowed.

Lastly, whatſoever be pretended, the people are no meet arbitrators, but rather the quiet, modeſt, and private aſſemblies, and conferences of the learned. *Qui apud incapacem loquitur, non diſceptat, ſed calumniatur.* The preſs and pulpit would be freed and diſcharged of theſe contentions; neither promotion on the one ſide, nor glory and heat on the other ſide, ought to continue thoſe challenges and cartels at the croſs, and other places: but rather all preachers, eſpecially ſuch as be of good temper, and have wiſdom with conſcience, ought to inculcate and beat upon a peace ſilence and ſurceance. Neither let them fear *Solon*'s law, which compelled in factions every particular perſon to range himſelf on the one ſide; nor yet the fond calumny of neutrality; but let them know that is true which is ſaid by a wiſe man, That neuters in contentions, are either better or worſe than either ſide.

These things have I in all ſincerity and ſimplicity ſet down, touching the controverſies which now trouble the church of *England*; and that without all art and inſinuation, and therefore not like to be grateful to either part: Notwithſtanding, I truſt what hath been ſaid ſhall find a correſpondence in their minds which are not imbarked in partiality, and which love the whole better than a part; wherefore I am not out of hope that it may do good; at the leaſt I ſhall not repent myſelf of the meditation.

CERTAIN

CERTAIN

CONSIDERATIONS

Touching the better

PACIFICATION and EDIFICATION

OF THE

CHURCH of *ENGLAND.*

Dedicated to his moſt Excellent MAJESTY.

THE unity of your church, (excellent Sovereign) is a thing no leſs precious than the union of your kingdoms; being both works wherein your happineſs may contend with your worthineſs. Having therefore preſumed, not without your Majeſty's gracious acceptation, to ſay ſomewhat of the one; I am the more encouraged not to be ſilent in the other: the rather, becauſe it is an argument that I have travelled in hereto-
Vid. p. 458. fore. But *Solomon* commendeth a word ſpoken in ſeaſon, and as our Saviour (ſpeaking of the diſcerning of ſeaſons) ſaith, *When you ſee a cloud riſing in the weſt, you ſay it will be a ſhower:* So your Majeſty's riſing to this Monarchy in the weſt parts of the world, doth promiſe a ſweet and fruitful ſhower of many bleſſings upon this church and commonwealth; a ſhower of that influence as the very firſt dews and drops thereof, have already layed the ſtorms and winds throughout Chriſtendom; reducing the very face of *Europe* to a more peaceable and amiable countenance. But to the purpoſe.

IT is very true, that theſe eccleſiaſtical matters are things not properly appertaining to my profeſſion; which I was not ſo inconſiderate, but to object to myſelf: but finding that it is many times ſeen that a man that ſtandeth off, and ſomewhat removed from a plot of ground, doth better ſurvey it and diſcover it, than thoſe which are upon it; I thought it not impoſſible, but that I, as a looker on, might caſt mine eyes upon ſome things which the actors themſelves (eſpecially ſome being intereſted, ſome led and addicted, ſome declared and engaged) did not or would not ſee. And that knowing in my conſcience (whereto God beareth witneſs) that the things which I ſhall ſpeak, ſpring out of no vein of popularity, oſtentation, deſire of novelty, partiality to either ſide, diſpoſition to intermedle, or any the like leaven; I may conceive hope that what I want in depth of judgment, may be countervailed in ſimplicity and ſincerity of affection. But of all things this did moſt animate me; that I found in theſe opinions of mine (which I have long held and embraced, as may appear by that which I have many years ſince written of them, according to the proportion nevertheleſs of my weakneſs) a conſent and conformity with that which your Majeſty hath publiſhed of your own moſt Chriſtian, moſt wiſe, and moderate ſenſe, in theſe cauſes; wherein you have well expreſſed to the world, that there is infuſed in your ſacred breaſt from God

God that high principle, and poſition of government, that you ever hold the whole more dear than any part.

For who ſeeth not that many are affected, and give opinion in theſe matters, as if they had not ſo much a deſire to purge the evil from the good, as to countenance and protect the evil by the good? Others ſpeak as if their ſcope were only to ſet forth what is good, and not to ſeek what is poſſible, which is to wiſh and not to propound. Others proceed as if they had rather a mind of removing than of reforming; but howſoever either ſide, as men (though excellent men) ſhall run into extremities; yet your Majeſty, as a moſt wiſe, equal, and chriſtian moderator, is diſpoſed to find out the golden mediocrity in the eſtabliſhment of that which is ſound, and in the reparation of that which is corrupt and decayed. To your princely judgment, then I do in all humbleneſs ſubmit whatſoever I ſhall propound, offering the ſame but as a mite, into the treaſury of your wiſdom. For as the aſtronomers do well obſerve, that when three of the ſuperior lights do meet in conjunction, it bringeth forth ſome admirable effects: ſo there being joined in your Majeſty the light of nature, the light of learning, and above all, the light of God's holy Spirit; it cannot be but your government muſt be as a happy conſtellation over the ſtates of your kingdoms. Neither is there wanting to your Majeſty that fourth light, which though it be but a borrowed light, yet is of ſingular efficacy and moment added to the reſt, which is the light of a moſt wiſe and well compounded council; to whoſe honourable and grave wiſdoms I do likewiſe ſubmit whatſoever I ſhall ſpeak, hoping that I ſhall not need to make proteſtation of my mind and opinion, that until your Majeſty doth otherwiſe determine and order, all actual and full obedience is to be given unto eccleſiaſtical juriſdiction as it now ſtandeth; and when your Majeſty hath determined and ordered that every good ſubject ought to reſt ſatisfied, and apply his obedience to your Majeſty's laws, ordinances, and royal commandments; nor of the diſlike I have of all immodeſty, bitterneſs, peremptory preſumption, popular handling, and other courſes, tending rather to rumour and impreſſion in the vulgar ſort, than to likelihood of effect, joined with obſervation of duty.

But before I enter into the points controverted, I think good to remove (if it may be) two opinions, which directly confront and oppone to reformation: the one bringing it to a nullity, and the other to an impoſſibility. The firſt is, that it is againſt good policy to innovate any thing in church matters: the other, that all reformation muſt be after one platform.

For the firſt of theſe, it is excellently ſaid by the prophet; *State ſuper vias antiquas, & videte, quaenam ſit via recta & vera, & ambulate in ea.* So as he doth not ſay, *State ſuper vias antiquas, & ambulate in eis:* For it is true, that with all wiſe and moderate perſons, cuſtom and uſage obtaineth that reverence, as it is ſufficient matter to move them to make a ſtand, and to diſcover and take a view; but it is no warrant to guide and conduct them: a juſt ground, I ſay, it is of deliberation, but not of direction. But on the other ſide, who knoweth not that time is truly compared to a ſtream that carrieth down freſh and pure waters into that ſalt ſea of corruption which enviroheth all human actions? And therefore if man ſhall not by his induſtry, virtue, and policy, as it were with the oar, row againſt the ſtream and inclination of time; all inſtitutions and ordinances, be they never ſo pure, will corrupt and degenerate. But not to handle this matter common-place like; I would only ask why the civil ſtate ſhould be purged and reſtored by good and wholeſome laws, made every third or fourth year in parliament aſſem-

bled; deviſing remedies as faſt as time breedeth miſchief; and contrariwiſe the eccleſiaſtical ſtate ſhould ſtill continue upon the dregs of time, and receive no alteration now for theſe five and forty years and more? If any man ſhall object, that if the like intermiſſion had been uſed in civil cauſes alſo, the error had not been great: Surely the wiſdom of the kingdom hath been otherwiſe in experience for three hundred years ſpace at the leaſt. But if it be ſaid to me, that there is a difference between civil cauſes and eccleſiaſtical, they may as well tell me that churches and chapels need no reparations, though caſtles and houſes do: whereas commonly, to ſpeak truth, dilapidations of the inward and ſpiritual edifications of the church of God are in all times as great as the outward and material. Sure I am that the very word and ſtyle of reformation uſed by our Saviour, *ab initio non fuit ſic*, was applied to church matters, and thoſe of the higheſt nature, concerning the law moral.

Nevertheless, he were both unthankful and unwiſe, that would deny but that the church of *England*, during the time of Queen *Elizabeth*, of famous memory, did flouriſh. If I ſhould compare it with foreign churches, I would rather the compariſon ſhould be in the virtues than as ſome make it in the defects; rather, I ſay, as between the vine and the olive, which ſhould be moſt fruitful; and not as between the briar and the thiſtle, which ſhould be moſt unprofitable. For that reverence ſhould be uſed to the church, which the good ſons of *Noah* uſed to their father's nakedneſs; that is, as it were to go backwards, and to help the defects thereof, and yet to diſſemble them. And it is to be acknowledged, that ſcarcely any church, ſince the primitive church, yielded in like number of years and latitude of country, a greater number of excellent preachers, famous writers, and grave governors: but for the diſcipline and orders of the church as many; and the chiefeſt of them, are holy and good: ſo yet, if St. *John* were to indite an epiſtle to the church of *England*, as he did to them of *Aſia*, it would ſure have the clauſe; *habeo adverſus te pauca*. And no more for this point, ſaving, that as an appendix thereto, it is not amiſs to touch that objection, which is made to the time, and not to the matter; pretending, that if reformation were neceſſary, yet it were not now ſeaſonable at your Majeſty's firſt entrance: yet *Hippocrates* ſaith, *Si quid moves, a principio move*: and the wiſdom of all examples do ſhew, that the wiſeſt princes, as they have ever been the moſt ſparing in removing or alteration of ſervants and officers upon their coming in: ſo for removing of abuſes and enormities; and for reforming of laws, and the policy of their ſtates, they have chiefly ſought to ennoble and commend their beginnings therewith; knowing that the firſt impreſſion with people continueth long: and when men's minds are moſt in expectation and ſuſpence, then are they beſt wrought and managed: and therefore it ſeemeth to me, that as the ſpring of nature, (I mean the ſpring of the year) is the beſt time for purging and medicining the natural body, ſo the ſpring of kingdoms is the moſt proper ſeaſon for the purging and rectifying of politic bodies.

There remaineth yet an objection, rather of ſuſpicion than of reaſon; and yet ſuch as I think maketh a great impreſſion in the minds of very wiſe and well-affected perſons; which is, that if way be given to mutation, though it be in taking away abuſes, yet it may ſo acquaint men with ſweetneſs of change, as it will undermine the ſtability even of that which is ſound and good. This ſurely had been a good and true allegation in the ancient contentions and diviſions between the people and the ſenate of *Rome*; where things were carried at the appetites of multitudes, which can never keep within

within the compaſs of any moderation: but theſe things being with us to have an orderly paſſage under a King who hath a royal power and approved judgment; and knoweth as well the meaſure of things as the nature of them: it is ſurely a needleſs fear. For they need not doubt but your Majeſty, with the advice of your council, will diſcern what things are intermingled, like the tares amongſt the wheat, which have their roots ſo enwrapped and entangled, as the one cannot be pulled up without endangering the other, and what are mingled, but as the chaff and the corn, which need but a fan to ſift and ſever them. So much therefore for the firſt point of no reformation to be admitted at all.

For the ſecond point; that there ſhould be but one form of diſcipline in all churches; and that impoſed by a neceſſity of a commandment and preſcript out of the word of God: it is a matter volumes have been compiled of, and therefore cannot receive a brief redargution. I for my part do confeſs, that in revolving the ſcriptures, I could never find any ſuch thing: but that God had left the like liberty to the church government, as he had done to the civil government; to be varied according to time and place and accidents, which nevertheleſs his high and divine providence doth order and diſpoſe. For all civil governments are reſtrained from God unto the general grounds of juſtice and manners; but their policies and forms of them are left free: ſo that monarchies and kingdoms, ſenates and ſeignories, popular ſtates, and communalties are lawful, and where they are planted ought to be maintained inviolate.

So likewiſe in church matters the ſubſtance of doctrine is immutable; and ſo are the general rules of government: but for rites and ceremonies, and for the particular hierarchies, policies, and diſcipline of churches, they be left at large. And therefore it is good we return unto the ancient bounds of unity in the church of God; which was one faith, one baptiſm; and not one hierarchy, one diſcipline: and that we obſerve the league of Chriſtians, as it is penned by our Saviour; which is in ſubſtance of doctrine this: *He that is not with us, is againſt us:* but in things indifferent, and but of circumſtance this; *He that is not againſt us, is with us.* In theſe things, ſo as the general rules be obſerved; that Chriſt's flock be fed; that there be a ſucceſſion in biſhops and miniſters, which are the prophets of the New Teſtament; that there be a due and reverent uſe of the power of the keys; that thoſe that preach the goſpel, live of the goſpel; that all things tend to edification; that all things be done in order and with decency, and the like: the reſt is left to the holy wiſdom and ſpiritual diſcretion of the maſter builders, and inferior builders in Chriſt's church; as it is excellently alluded by that father that noted, that Chriſt's garment was without ſeam; and yet the church's garment was of divers colours: and thereupon ſetteth down for a rule; *in veſte varietas ſit, ſciſſura non ſit.*

In which variety, nevertheleſs, it is a ſafe and wiſe courſe to follow good examples and precedents; but then by the rules of imitation and example to conſider not only which are beſt, but which are the likelieſt; as namely, the government of the church in the pureſt times of the firſt good Emperors that embraced the faith. For the times of perſecution before temporal princes received our faith, as they were excellent times for doctrine and manners, ſo they be improper and unlike examples of outward government and policy. And ſo much for this point: now to the particular points of controverſies, or rather of reformation.

Circum-

Circumſtances in the government of BISHOPS.

FIRST therefore, for the government of biſhops, I for my part, not prejudging the precedents of other reformed churches, do hold it warranted by the word of God, and by the practice of the ancient church in the better times; and much more convenient for kingdoms than parity of miniſters and government by ſynods. But then farther, it is to be conſidered, that the church is not now to plant or build; but only to be pruned from corruption, and to be repaired and reſtored in ſome decays.

FOR it is worth the noting, that the ſcripture ſaith, *tranſlato ſacerdotio, neceſſe eſt ut legis fiat tranſlatio.* It is not poſſible in reſpect of the great and near ſympathy between the ſtate civil, and the ſtate eccleſiaſtical, to make ſo main an alteration in the church, but it would have a perilous operation upon the kingdoms; and therefore it is fit that controverſy be in peace and ſilence.

BUT there be two circumſtances in the adminiſtration of biſhops, wherein I confeſs I could never be ſatisfied; the one, the ſole exerciſe of their authority; the other, the deputation of their authority.

FOR the firſt, the biſhop giveth orders alone, excommunicateth alone, judgeth alone. This ſeemeth to be a thing almoſt without example in good government; and therefore not unlikely to have crept in, in the degenerate and corrupt times. We ſee the greateſt Kings and Monarchs have their councils. There is no temporal court in *England* of the higher ſort where the authority doth reſt in one perſon: the King's bench, common pleas, and the exchequer, are benches of a certain number of judges. The chancellor of *England* hath an aſſiſtance of twelve maſters of the chancery. The maſter of the wards hath a council of the court: ſo hath the chancellor of the duchy. In the exchequer chamber, the Lord Treaſurer is joined with the chancellor and the barons. The Maſters of the requeſts are ever more than one. The juſtices of aſſize are two. The Lord Preſidents in the North and in *Wales* have councils of divers: the ſtar-chamber is an aſſembly of the King's privy council, aſperſed with the Lords ſpiritual and temporal: ſo as in the courts the principal perſon hath ever collegues or aſſeſſors.

THE like is to be found in other well-governed commonwealths abroad, where the juriſdiction is yet more diſperſed; as in the courts of parliament of *France*, and in other places. No man will deny but the acts that paſs the biſhop's juriſdiction are of as great importance as thoſe that paſs the civil courts: for mens ſouls are more precious than their bodies or goods, and ſo are their good names. Biſhops have their infirmities, and have no exception from that general malediction which is pronounced againſt all men living, *vae ſoli, nam ſi occideret, &c.* Nay, we ſee that the firſt warrant in ſpiritual cauſes is directed to a number, *dic eccleſiae*; which is not ſo in temporal matters: and we ſee that in general cauſes of church government, there are as well aſſemblies of all the clergy in councils, as of all the ſtates in parliament. Whence ſhould this ſole exerciſe of juriſdiction come? Surely I do ſuppoſe, and I think upon good ground, that *ab initio non fuit ita:* and that the deans and chapters were councils about the ſees and chairs of biſhops at the firſt, and were unto them a presbytery or conſiſtory; and intermeddled not only in the diſpoſing of their revenues and endowments; but much more in juriſdiction eccleſiaſtical. But it is probable, that the deans and chapters ſtuck cloſe to the biſhops in matters of profit and the world, and would not loſe their hold but in matters of juriſdiction; (which they accounted

counted but trouble and attendance) they ſuffered the biſhops to encroach and uſurp; and ſo the one continueth, and the other is loſt. And we ſee that the biſhop of *Rome*, (*Fas enim & ab hoſte doceri*, and no queſtion in that church the firſt inſtitutions were excellent) performeth all eccleſiaſtical juriſdiction as in conſiſtory.

And whereof conſiſteth this conſiſtory, but of the pariſh prieſts of *Rome*, which term themſelves cardinals, *a cardinibus mundi*; becauſe the biſhop pretendeth to be univerſal over the whole world. And hereof again we ſee many ſhadows yet remaining: as, that the dean and chapter *pro forma*, chuſeth the biſhop, which is the higheſt point of juriſdiction: and that the biſhop when he giveth orders, if there be any miniſters caſually preſent, calleth them to join with him in the impoſition of hands, and ſome other particulars. And therefore it ſeemeth to me a thing reaſonable and religious, and according to the firſt inſtitution, that biſhops in the greateſt cauſes; and thoſe which require a ſpiritual diſcerning, namely, in ordaining, ſuſpending or depriving miniſters in excommunication, (being reſtored to the true and proper uſe, as ſhall be afterwards touched) in ſentencing the validity of marriages and legitimations, in judging cauſes criminous; as ſimony, inceſt, blaſphemy, and the like, ſhould not proceed ſole and unaſſiſted: which point (as I underſtand it) is a reformation that may be planted *ſine ſtrepitu*, without any perturbation at all: and it is a matter which will give ſtrength to the biſhop's countenance, to the inferior degrees of prelates or miniſters, and the better iſſue or proceeding to thoſe cauſes that ſhall paſs.

And as I wiſh this ſtrength given to the biſhops by counſel, ſo it is not unworthy your Majeſty's conſideration, whether you ſhall not think fit to give ſtrength to the general council of your clergy, (the convocation-houſe,) which was then reſtrained when the ſtate of the clergy was thought a ſuſpected part to the kingdom, in regard of their late homage to the biſhop of *Rome*; which ſtate now will give place to none in their loyalty and devotion to your Majeſty.

For the ſecond point, which is the deputation of their authority, I ſee no perfect and ſure ground for that neither, being ſomewhat different from the examples and rules of government. The biſhop exerciſeth his juriſdiction by his chancellor and commiſſary official, *&c.* We ſee in all laws in the world, offices of confidence and skill cannot be put over or exerciſed by deputy, except it be eſpecially contained in the original grant; and in that caſe it is doubtful. And for experience, there was never any chancellor of *England* made a deputy; there was never any judge in any court made a deputy. The biſhop is a judge and of a high nature; whence cometh it that he ſhould depute? conſidering, that all truſt and confidence, as was ſaid, is perſonal and inherent; and cannot, nor ought not to be tranſpoſed. Surely in this again, *ab initio non fuit ſic*: but it is probable that biſhops when they gave themſelves too much to the glory of the world, and became grandees in kingdoms, and great counſellors to princes, then did they delegate their proper juriſdictions as things of too inferior a nature for their greatneſs: and then after the ſimilitude and imitation of kings and counts palatine, they would have their chancellors and judges.

But that example of Kings and potentates giveth no good defence. For the reaſons why Kings adminiſter by their judges, although themſelves are ſupreme judges, are two: The one, becauſe the offices of Kings are for the moſt part of inheritance; and it is a rule in all laws, that offices of inheritance are rather matters that ground in intereſt than in confidence: for as much

much as they may fall upon women, upon infants, upon lunaticks and idiots, perſons incapable to execute judicature in perſon; and therefore ſuch offices by all laws might ever be exerciſed and adminiſtred by delegation. The ſecond reaſon is, becauſe of the amplitude of their juriſdictions; which is as great as either their birth-right from their anceſtors, or their ſword-right from God maketh it. And therefore, if *Moſes* that was governour over no great people, and thoſe collected together in a camp, and not ſcattered in provinces and cities, himſelf of an extraordinary ſpirit, was nevertheleſs not able to ſuffice and hold out in perſon to judge the people, but did by the advice of *Jethro* approved from God, ſubſtitute elders and judges; how much more other Kings and princes?

THERE is a third reaſon likewiſe, though not much to the preſent purpoſe; and that is, that Kings either in reſpect of the common-wealth, or of the greatneſs of their own patrimonies, are uſually parties in ſuits; and then their judges ſtand indifferent between them and the ſubject: but in the caſe of biſhops, none of theſe reaſons hold. For firſt their office is elective, and for life, and not patrimonial or hereditary; an office merely of confidence, ſcience, and qualification. And for the ſecond reaſon, it is true, that their juriſdiction is ample and ſpacious; and that their time is to be divided between the labours, as well in the word and doctrine, as in government and juriſdiction. But yet I do not ſee, (ſuppoſing the biſhops courts to be uſed incorruptly, and without any indirect courſe held to multiply cauſes for gain of fees) but that the biſhop might very well for cauſes of moment, ſupply his judicial function in his own perſon. For we ſee before our eyes, that one chancellor of *England* diſpatcheth the ſuits in equity of the whole kingdom; which is not ſo much by reaſon of the excellency of that rare honourable perſon which now holdeth the place: but it was ever ſo, though more or leſs burdenous to the ſuitor, as the chancellor was more or leſs able to give diſpatch. And if hold be taken of that which was ſaid before, that the biſhop's labour in the word muſt take up a principal part of his time; ſo I may ſay again, that matters of ſtate have taken up moſt of the chancellor's time; having been for the moſt part perſons upon whom the Kings of this realm have moſt relied for matters of counſel. And therefore there is no doubt but the biſhop, whoſe circuit is leſs ample, and the cauſes in nature not ſo multiplying, with the help of references and certificates to and from fit perſons, for the better ripening of cauſes in their mean proceedings, and ſuch ordinary helps incident to juriſdiction, may very well ſuffice his office. But yet there is another help: for the cauſes that come before him are theſe: tythes, legacies, adminiſtrations, and other teſtamentary cauſes; cauſes matrimonial, accuſations againſt miniſters, tending to their ſuſpenſion, deprivation, or degrading; ſimony, incontinency, hereſy, blaſphemy, breach of the ſabbath, and other like cauſes of ſcandal. The firſt two of theſe, in my opinion, differ from the reſt; that is, tythes and teſtaments: for thoſe be matters of profit, and in their nature temporal; though by a favour and connivance of the temporal juriſdiction, they have been allowed and permitted to the courts eccleſiaſtical: the one, to the end the clergy might ſue for that that was their ſuſtentation before their own judges, and the other in a kind of piety and religion, which was thought incident to the performance of dead mens wills. And ſurely for theſe two the biſhop, in my opinion, may with leſs danger diſcharge himſelf upon his ordinary judges. And I think likewiſe it will fall out, that thoſe ſuits are in the greateſt number. But for the reſt, which require a ſpiritual ſcience and diſcretion, in reſpect of their nature,

ture, or of the ſcandal, it were reaſon, in my opinion, there were no audience given but by the biſhop himſelf; he being alſo aſſiſted, as was touched before: but it were neceſſary alſo he were attended by his chancellor, or ſome others his officers, being learned in the civil laws, for his better inſtruction in points of formality, or the courſes of the court; which if it were done, then were there leſs uſe of the officials court, whereof there is now ſo much complaint: and cauſes of the nature aforeſaid, being only drawn to the audience of the biſhop, it would repreſs frivolous and prowling ſuits, and give a grave and incorrupt proceeding to ſuch cauſes as ſhall be fit for the court.

THERE is a third point alſo, not of juriſdiction, but of form of proceeding, which may deſerve reformation: the rather, becauſe it is contrary to the laws and cuſtoms of this land and ſtate, which though they do not rule thoſe proceedings, yet may they be adviſed with for better directions, and that is the oath *ex officio*; whereby men are enforced to accuſe themſelves; and what is more, are ſworn unto blanks, and not unto accuſations and charges declared. By the law of *England* no man is bound to accuſe himſelf. In the higheſt caſes of treaſon torture is uſed for diſcovery, and not for evidence. In capital matters no delinquent's anſwer upon oath, is required; no, not permitted. In criminal matters not capital, handled in the *Star-Chamber*, and in cauſes of conſcience handled in the chancery, for the moſt part grounded upon truſt and ſecrecy, the oath of the party is required. But how? Where there is an accuſation and an accuſer, which we call bills of complaint (from which the complainant cannot vary, and out of the compaſs of the which the defendant may not be examined) exhibited unto the court, and by proceſs notified unto the defendant. But to examine a man upon oath, out of the inſinuation of fame, or out of accuſations ſecret and undeclared; though it have ſome countenance from the civil law; yet it is ſo oppoſite *ex diametro* to the ſenſe and courſe of the common law, as it may well receive ſome limitation.

Concerning the Liturgy, the Ceremonies and Subſcription.

FOR the liturgy, great reſpect and heed would be taken, leſt by inveighing againſt the dumb miniſtry, due reverence be not withdrawn from the liturgy. For though the gift of preaching be far above that of reading; yet the action of the liturgy is as high and holy as that of the ſermon. It is ſaid, *Domus mea domus orationis vocabitur: the houſe of prayer*; not the houſe of preaching: and whereas the Apoſtle ſaith, *How ſhall men call upon him, on whom they have not believed? And how ſhall they believe unleſs they hear? And how ſhall they hear without a preacher?* It appeareth that as preaching is the more original, ſo prayer is the more final; as the difference is between the ſeed and the fruit: for the keeping of God's law, is the fruit of the teaching of the law, and prayer, or invocation, or divine ſervice, or liturgy, (for theſe be but varieties of terms;) is the immediate hallowing of the name of God, and the principal work of the firſt table, and of the great commandment of the love of God. It is true that the preaching of the holy word of God is the ſowing of the ſeed; it is the lifting up of the brazen ſerpent, the miniſtry of faith, and the ordinary means of ſalvation; but yet it is good to take example, how that the beſt actions of the worſhip of God may be extolled exceſſively and ſuperſtitiouſly. As the extolling of the ſacrament, bred the ſuperſtition of the maſs; the extolling of the liturgy and prayers, bred the ſuperſtition of the monaſtical orders and oraiſons: and ſo

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no doubt preaching likewiſe may be magnified and extolled ſuperſtitiouſly, as if all the whole body of God's worſhip ſhould be turned into an ear. So as none (as I ſuppoſe) of ſound judgment will derogate from the liturgy, if the form thereof be in all parts agreeable to the word of God, the example of the primitive church, and that holy decency which St. *Paul* commendeth. And therefore firſt, that there be a ſet form of prayer, and that it be not left either to an extemporal form, or to an arbitrary form. Secondly, that it conſiſt as well of lauds, hymns, and thankſgivings, as of petitions, prayers, and ſupplications. Thirdly, that the form thereof be quickened with ſome ſhortneſs and diverſities of prayers and hymns, and with ſome interchanges of the voice of the people, as well as of the miniſter. Fourthly, that it admit ſome diſtinctions of times, and commemorations of God's principal benefits, as well general as particular. Fifthly, that prayers likewiſe be appropriated to ſeveral neceſſities and occaſions of the church. Sixthly, that there be a form likewiſe of words and liturgy in the adminiſtration of the ſacraments, and in the denouncing of the cenſures of the church, and other holy actions and ſolemnities: theſe things I think will not be much controverted.

But for the particular exceptions to the liturgy in form as it now ſtandeth, I think divers of them allowing they were juſt, yet they ſeem not to be weighty; otherwiſe than that nothing ought to be counted light in matters of religion and piety: as the heathen himſelf could ſay, *etiam vultu ſaepe laeditur pietas.* That the word (prieſt) ſhould not be continued, eſpecially with offence, the word (miniſter) being already made familiar. This may be ſaid that it is a good rule in tranſlation, never to confound that in one word in the tranſlation, which is preciſely diſtinguiſhed in two words in the original, for doubt of equivocation and traducing. And therefore ſeeing the word πρεσβύτερος and ἱερεὺς, be always diſtinguiſhed in the original; and the one uſed for a ſacrificer, the other for a miniſter; the word prieſt being made common to both (whatſoever the derivation be) yet in uſe it confoundeth the miniſter with the ſacrificer. And for an example of this kind, I did ever allow the diſcretion and tenderneſs of the *Rhemiſh* tranſlation in this point; that finding in the original the word ἀγάπη and never ἔρως, do ever tranſlate charity, and never love, becauſe of the indifferency and equivocation of the word with impure love.

Touching the abſolution, it is not unworthy conſideration, whether it may not be thought improper and unneceſſary: for there are but two ſorts of abſolution; both ſuppoſing an obligation precedent: the one upon an excommunication, which is religious and primitive; the other upon confeſſion and penance, which is ſuperſtitious, or at leaſt poſitive; and both particular, neither general. Therefore ſince the one is taken away, and the other hath its proper caſe, what doth a general abſolution, wherein there is neither penance nor excommunication precedent? For the church never looſeth, but where the church hath bound. And ſurely I may think this at the firſt was allowed in a kind of ſpiritual diſcretion, becauſe the church thought the people could not be ſuddenly weaned from their conceit of aſſoyling, to which they had been ſo long accuſtomed.

For confirmation to my underſtanding, the ſtate of the queſtion is, whether it be not a matter miſtaken and altered by time; and whether that be not now made a ſubſequent to baptiſm, which was indeed an inducement to the communion. For whereas in the primitive church children were examined of their faith before they were admitted to the communion, time may

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ſeem to have turned it to refer as if it had been to receive a confirmation of their baptiſm.

For private baptiſm by women, or lay-perſons, the beſt divines do utterly condemn it; and I hear it not generally defended; and I have often marvelled, that where the book in the preface to publick baptiſm doth acknowledge that baptiſm in the practice of the primitive church was anniverſary, and but at certain times; which ſheweth that the primitive church did not attribute ſo much to the ceremony, as they would break an outward and general order for it; the book ſhould afterwards allow of private baptiſm, as if the ceremony were of that neceſſity, as the very inſtitution which committed baptiſm only to the miniſters, ſhould be broken in regard of the ſuppoſed neceſſity. And therefore this point of all others I think was but a *Conceſſum propter duritiem cordis.*

For the form of celebrating matrimony, the ring ſeemeth to many even of vulgar ſenſe and underſtanding, a ceremony not grave, eſpecially to be made (as the words make it) the eſſential part of the action, beſides ſome other of the words are noted in ſpeech to be not ſo decent and fit.

For muſick in churches; that there ſhould be ſinging of *Pſalms* and ſpiritual ſongs, is not denied: ſo the queſtion is *de modo*, wherein if a man will look attentively into the order and obſervation of it, it is eaſy to diſcern between the wiſdom of the inſtitution, and the exceſs of the late times. For firſt there are no ſongs or verſes ſung by the quire, which are not ſuppoſed by continual uſe to be ſo familiar with the people, as they have them without book, whereby the ſound hurteth not the underſtanding; and thoſe which cannot read upon the book, are yet partakers of the ſenſe, and may follow it with their mind. So again, after the reading of the word, it was thought fit there ſhould be ſome pauſe for holy meditations, before they proceeded to the reſt of the ſervice: which pauſe, was thought fit to be filled rather with ſome grave ſound, than with a ſtill ſilence; which was the reaſon of the playing upon the organs after the ſcriptures read; all which was decent and tending to edification. But then the curioſity of diviſion and reports, and other figures of muſick, have no affinity with the reaſonable ſervice of God, but were added in the more pompous times.

For the cap and ſurplice, ſince they be things in their nature indifferent, and yet by ſome held ſuperſtitious; and that the queſtion is between ſcience and conſcience, it ſeemeth to fall within the compaſs of the Apoſtle's rule, which is, *that the ſtronger do deſcend and yield to the weaker.* Only the difference is, that it will be materially ſaid, that the rule holdeth between private man, and private man; but not between the conſcience of a private man, and the order of a church. But yet ſince the queſtion at this time is of a toleration, not by connivance, which may encourage diſobedience, but by law, which may give a liberty; it is good again to be adviſed whether it fall not within the equity of the former rule: the rather, becauſe the ſilencing of miniſters by this occaſion, is, in this ſcarcity of good preachers, a puniſhment that lighteth upon the people as well as upon the party. And for the ſubſcription, it ſeemeth to me in the nature of a confeſſion, and therefore more proper to bind in the unity of faith, and to be urged rather for articles of doctrine, than for rites and ceremonies, and points of outward government. For howſoever politick conſiderations and reaſons of ſtate may require uniformity, yet Chriſtian and divine grounds look chiefly upon unity.

Touching a Preaching Miniſtry.

TO ſpeak of a learned miniſtry: it is true that the worthineſs of the paſtors and miniſters is of all other points of religion the moſt ſummary; I do not ſay the greateſt, but the moſt effectual towards the reſt: but herein to my underſtanding, while men go on in zeal to haſten this work, they are not aware of as great or greater inconvenience, than that which they ſeek to remove. For while they inveigh againſt a dumb miniſtry, they make too eaſy and too promiſcuous an allowance of ſuch as they account preachers; having not reſpect enough to their learnings in other arts, which are handmaids to divinity; not reſpect enough to years, except it be in caſe of extraordinary gift; not reſpect enough to the gift itſelf, which many times is none at all. For God forbid, that every man that can take unto himſelf boldneſs to ſpeak an hour together in a church upon a text, ſhould be admitted for a preacher, though he mean never ſo well. I know there is a great latitude in gifts, and a great variety in auditories and congregations; but yet ſo as there is *aliquid infimum*, below which you ought not to deſcend. For you muſt rather leave the ark to ſhake as it ſhall pleaſe God, than put unworthy hands to hold it up. And when we are in God's temple, we are warned rather to *put our hands upon our mouth, than to offer the ſacrifice of fools*. And ſurely it may be juſtly thought, that amongſt many cauſes of atheiſm, which are miſerably met in our age; as ſchiſms and controverſies, profane ſcoffings in holy matters, and others; it is not the leaſt that divers do adventure to handle the word of God which are unfit and unworthy. And herein I would have no man miſtake me, as if I did extol curious and affected preaching; which is as much on the other ſide to be diſliked, and breedeth atheiſm and ſcandal as well as the other; (for who would not be offended at one that cometh into the pulpit, as if he came upon the ſtage to play parts or prizes?) neither on the other ſide, as if I would diſcourage any who hath any tolerable gift.

BUT upon this point I ground three conſiderations: Firſt, whether it were not requiſite to renew that good exerciſe which was practiſed in this church ſome years, and afterwards put down by order indeed from the church, in regard of ſome abuſe thereof, inconvenient for thoſe times, and yet againſt the advice and opinion of one of the greateſt and graveſt prelates of this land, and was commonly called propheſying, which was this; that the miniſters within a precinct did meet upon a week-day in ſome principal town, where there was ſome antient grave miniſter that was preſident, and an auditory admitted of gentlemen, or other perſons of leiſure. Then every miniſter ſucceſſively, beginning with the youngeſt, did handle one and the ſame part of ſcripture, ſpending ſeverally ſome quarter of an hour or better, and in the whole ſome two hours: and ſo the exerciſe being begun and concluded with prayer, and the preſident giving a text for the next meeting, the aſſembly was diſſolved. And this was, as I take it, a fortnight's exerciſe; which, in my opinion, was the beſt way to frame and train up preachers to handle the word of God as it ought to be handled, that hath been practiſed. For we ſee orators have their declamations, lawyers have their moots, logicians their ſophiſms; and every practice of ſcience hath an exerciſe of erudition and initiation before men come to the life; only preaching, which is the worthieſt, and wherein it is moſt danger to do amiſs, wanteth an introduction, and is ventured and ruſhed upon at the firſt: but unto this exerciſe of the prophecy,

I would wiſh theſe two additions: the one, that after this exerciſe, which is in ſome ſort public, there were immediately a private meeting of the ſame miniſters, where they might brotherly admoniſh the one the other; and eſpecially the elder ſort the younger, of any thing that had paſſed in the exerciſe in matter or manner unſound and uncomely; and in a word, might mutually uſe ſuch advice, inſtruction, comfort, or encouragement, as occaſion might miniſter; for publick reprehenſion were to be debarred. The other addition, that I mean, is, that the ſame exerciſe were uſed in the univerſities for young divines before they preſumed to preach, as well as in the country for miniſters. For they have in ſome colleges an exerciſe called a common place; which can in no degree be ſo profitable, being but the ſpeech of one man at one time. And if it be feared, that it may be occaſion to whet men's ſpeeches for controverſies, it is eaſily remedied, by ſome ſtrict prohibition, that matters of controverſy tending any way to the violating or diſquieting the peace of the church, be not handled or entered into; which prohibition, in regard there is ever to be a grave perſon preſident, or moderator, cannot be fruſtrated. The ſecond conſideration is, whether it were not convenient there ſhould be a more exact probation and examination of miniſters: namely, that the Biſhops do not ordain alone, but by advice; and then that ancient holy order of the church might be revived: by the which the biſhop did ordain miniſters but at four ſet times of the year; which were called, *quatuor tempora*; which are now called *Ember-weeks:* it being thought fit to accompany ſo high an action with general faſting and prayer, and ſermons, and all holy exerciſes; and the names likewiſe of thoſe that were to be ordained, were publiſhed ſome days before their ordination: to the end, exceptions might be taken if juſt cauſe were. The third conſideration is, that if the caſe of the church of *England* be, that were a computation taken of all the parochian churches, (allowing the union of ſuch as were too ſmall and adjacent;) and again a computation to be taken of the perſons who are worthy to be paſtors: and upon the ſaid account, if it fall out that there are many more churches than paſtors, then of neceſſity recourſe muſt be had to one of theſe remedies; either that pluralities muſt be allowed, (eſpecially if you can by permutation make the benefices more compatible;) or that there be allowed preachers to have a more general charge, to ſupply and ſerve by turn pariſhes unfurniſhed: for that ſome churches ſhould be provided of paſtors able to teach, and others wholly deſtitute, ſeemeth to me to be againſt the communion of Saints and Chriſtians, and againſt the practice of the primitive church.

Touching the abuſe of Excommunication.

EXcommunication is the greateſt judgment upon earth; being that which is ratified in heaven; and being a precurſory or preluſory judgment of the great judgment of Chriſt in the end of the world. And therefore for this to be uſed irreverently, and to be made an ordinary proceſs, to lackey up and down for fees; how can it be without derogation to God's honour, and making the power of the keys contemptible? I know very well the defence thereof, which hath no great force; that it iſſueth forth not for the thing itſelf, but for the contumacy. I do not deny, but this judgment is, as I ſaid before, of the nature of God's judgments; of the which it is a model. For as the judgment of God taketh hold of the leaſt ſin of the impenitent, and taketh no hold of the greateſt ſin of the convert or penitent;

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ſo excommunication may in caſe iſſue upon the ſmalleſt offence, and in caſe not iſſue upon the greateſt: but is this contumacy ſuch a contumacy as excommunication is now uſed for? For the contumacy muſt be ſuch as the party (as far as the eye and wiſdom of the church can diſcern) ſtandeth in ſtate of reprobation and damnation: as one that for that time ſeemeth given over to final impenitency. Upon this obſervation I ground two conſiderations: the one, that this cenſure be reſtored to the true dignity and uſe thereof; which is, that it proceed not but in cauſes of great weight; and that it be decreed not by any deputy or ſubſtitute of the biſhop, but by the biſhop in perſon; and not by him alone, but by the biſhop aſſiſted.

The other conſideration is, that in lieu thereof, there be given to the eccleſiaſtical court ſome ordinary proceſs with ſuch force and coertion as appertaineth; that ſo the dignity of ſo high a ſentence being retained, and the neceſſity of mean proceſs ſupplied, the church may be indeed reſtored to the ancient vigour and ſplendour. To this purpoſe, join'd with ſome other holy and good purpoſes, was there a bill drawn in parliament, in the three and twentieth year of the reign of the Queen deceaſed; which was the graveſt parliament that I have known; and the bill recommended by the graveſt counſellor of eſtate in parliament; though afterwards it was ſtayed by the Queen's ſpecial commandment, the nature of thoſe times conſidered.

Touching Non-Reſidents, and Pluralities.

FOR non-reſidence, except it be in caſe of neceſſary abſence, it ſeemeth an abuſe drawn out of covetouſneſs and ſloth: for that men ſhould live of the flock, that they do not feed, or of the altar at which they do not ſerve, is a thing that can hardly receive juſt defence; and to exerciſe the office of a paſtor, in matter of the word and doctrine by deputies, is a thing not warranted, as hath been touched before. The queſtions upon this point do ariſe upon the caſes of exception and excuſation, which ſhall be thought reaſonable and ſufficient, and which not. For the caſe of chaplains, let me ſpeak that with your Majeſty's pardon, and with reverence towards the other peers and grave perſons, whoſe chaplains by ſtatutes are privileged: I ſhould think, that the attendance which chaplains give to your Majeſty's court, and in the houſes and families of their lords, were a juſter reaſon why they ſhould have no benefice, than why they ſhould be qualified to have two: for, as it ſtandeth with chriſtian policy, that ſuch attendance be in no wiſe neglected; becauſe that good, which enſueth thereof to the church of God, may exceed, or countervail that which may follow of their labours in any, though never ſo large a congregation; ſo it were reaſonable that their maintenance ſhould honourably and liberally proceed thence, whence their labours be employed. Neither are there wanting in the church, dignities and preferments not joined with any exact cure of ſouls; by which, and by the hope of which ſuch attendants in ordinary (who ought to be, as for the moſt part they are, of the beſt gifts and ſort) may be farther encouraged and rewarded. And as for extraordinary attendants, they may very well retain the grace and countenance of their places and duties at times incident thereunto, without diſcontinuance or non-reſidence in their paſtoral charges. Next, for the caſe of intending ſtudies in the univerſities, it will more eaſily receive an anſwer; for ſtudies do but ſerve and tend to the practice of thoſe ſtudies: and therefore for that which is moſt principal and final to be left undone, for the attending of that which is ſubſervient and

and ſubminiſtrant, ſeemeth to be againſt proportion of reaſon. Neither do I ſee, but that they proceed right well in all knowledge, which do couple ſtudy with their practice; and do not firſt ſtudy altogether, and then practiſe altogether; and therefore they may very well ſtudy at their benefices. Thirdly, for the caſe of extraordinary ſervice of the church; as if ſome paſtor be ſent to a general council, or here to a convocation; and likewiſe for the caſe of neceſſity, as in the particular of infirmity of body, and the like, no man will contradict, but that there may be ſome ſubſtitution for ſuch a time. But the general caſe of neceſſity is the caſe of pluralities; the want of paſtors and inſufficiency of livings conſidered, *poſito*, that a man doth faithfully and inceſſantly divide his labours between two cures; which kind of neceſſity I come now to ſpeak of in the handling of pluralities.

For pluralities, in caſe the number of able miniſters were ſufficient, and the value of benefices were ſufficient, then pluralities were in no ſort tolerable. But we muſt take heed, we deſire not contraries. For to deſire that every pariſh ſhould be furniſhed with a ſufficient preacher, and to deſire that pluralities be forthwith taken away, is to deſire things contrary; conſidering, *de facto*, there are not ſufficient preachers for every pariſh: whereto add likewiſe, that there are not ſufficient living and maintenance in many pariſhes, to maintain a preacher; and it maketh the impoſſibility yet much the greater. The remedies *in rerum natura* are but three; union, permutation, and ſupply. Union of ſuch benefices as have the living too ſmall, and the pariſh not too great, and are adjacent. Permutation, to make benefices more compatible, though men be over-ruled to ſome loſs in changing a better for a nearer. Supply, by ſtipendiary preachers, to be rewarded with ſome liberal ſtipends, to ſupply, as they may, ſuch places which are unfurniſhed of ſufficient paſtors: As Queen *Elizabeth*, amongſt other her gracious acts, did erect certain of them in *Lancaſhire*; towards which penſions, I ſee no reaſon but reading miniſters, if they have rich benefices, ſhould be charged.

Touching the Proviſion for ſufficient Maintenance in the Church.

Touching church-maintenance, it is well to be weighed what is *jure divino*, and what *jure poſitivo*. It is a conſtitution of the divine law, from which human laws cannot derogate; that thoſe which feed the flock, ſhould live of the flock; that thoſe that ſerve at the altar, ſhould live of the altar; that thoſe which diſpenſe ſpiritual things, ſhould reap temporal things; of which it is alſo an appendix, that the proportion of this maintenance be not ſmall or neceſſitous, but plentiful and liberal. So then, that all the places and offices of the church be provided of ſuch a dotation, that they may be maintained, according to their ſeveral degrees, is a conſtitution permanent and perpetual: but for particularity of the endowment, whether it ſhould conſiſt of tithes, or lands, or penſions, or mixt, might make a queſtion of convenience, but no queſtion of preciſe neceſſity. Again, that the caſe of the church *de facto* is ſuch, that there is want in the church of patrimony, is confeſſed. For the principal places, namely, the biſhop's livings, are in ſome particulars not ſufficient; and therefore enforced to be ſupplied by toleration of commendams, things of themſelves unfit, and ever held of no good report. And as for the benefices and paſtors places, it is manifeſt that very many of them are very weak and penurious. On the other ſide, that there was a time when the church was rather burthened with ſuperfluity,

than with lack that is likewiſe apparent; but it is long ſince; ſo as the fault was in others; the want redoundeth unto us. Again, that it were to be wiſhed that impropriations were returned to the church as the moſt proper and natural endowments thereof, is a thing likewiſe wherein men's judgments will not much vary. Nevertheleſs, that it is an impoſſibility to proceed now, either to their reſumption or redemption, is as plain on the other ſide. For men are ſtated in them by the higheſt aſſurance of the kingdom, which is, act of parliament; and the value of them amounteth much above ten ſubſidies; and the reſtitution muſt of neceſſity paſs their hands, in whoſe hands they are now in poſſeſſion or intereſt.

But of theſe things which are manifeſtly true, to infer and ground ſome concluſions. Firſt, in mine own opinion and ſenſe, I muſt confeſs, (let me ſpeak it with reverence) that all the parliaments ſince 27 and 31 of *Henry* VIII. (who gave away impropriations from the church) ſeem to me to ſtand in a ſort obnoxious, and obliged to God in conſcience to do ſomewhat for the church, to reduce the patrimony thereof to a competency. For ſince they have debarred Chriſt's wife of a great part of her dowry, it were reaſon they made her a competent jointure. Next to ſay, that impropriations ſhould be only charged, that carrieth neither poſſibility nor reaſon. Not poſſibility, for the reaſons touched before: not reaſon, becauſe if it be conceived, that if any other perſon be charged, it ſhould be a re-charge, or double-charge, inaſmuch as he payeth tythes already, that is a thing miſtaken. For it muſt be remembred, that as the realm gave tythes to the church, ſo the realm ſince again hath given tythes away from the church unto the King, as they may give their eighth ſheaf or ninth ſheaf. And therefore the firſt gift being evacuated, it cannot go in defeaſance or diſcharge of that perpetual bond, wherewith men are bound to maintain God's miniſters. And ſo we ſee in example, that divers godly and well diſpoſed perſons, not impropriators, are content to encreaſe their preachers livings; which, though in law it be but a benevolence, yet before God it is a conſcience. Farther, that impropriation ſhould not be ſomewhat more deeply charged than other revenues of like value, methinks cannot well be denied, both in regard of the antient claim of the church, and the intention of the firſt giver: and again, becauſe they have paſſed in valuation between man and man, ſomewhat at the leſs rate, in regard of the ſaid pretence or claim of the church in conſcience before God. But of this point, touching church-maintenance, I do not think fit to enter into farther particularity, but reſerve the ſame to a fitter time.

Thus have I in all humbleneſs and ſincerity of heart, to the beſt of my underſtanding, given your Majeſty tribute of my cares and cogitations in this holy buſineſs, ſo highly tending to God's glory, your Majeſty's honour, and the peace and welfare of your ſtates: Inſomuch, as I am perſuaded, that the papiſts themſelves ſhould not need ſo much the ſeverity of penal laws, if the ſword of the ſpirit were better edged by ſtrengthening the authority, and ſuppreſſing the abuſes in the church.

To conclude, renewing my moſt humble ſubmiſſion of all that I have ſaid to your Majeſty's moſt high wiſdom: and again, moſt humbly craving pardon for any errors committed in this writing; which the ſame weakneſs of judgment that ſuffered me to commit them, would not ſuffer me to diſcover them, I end with my devout and fervent prayer to God; that as he hath made your Majeſty the corner-ſtone, in joining your two kingdoms,

ſo

ſo you may be alſo as a corner-ſtone to unite and knit together theſe differences in the church of God; to whoſe heavenly grace and never-erring direction, I commend your Majeſty's ſacred perſon, and all your doings.

A PRAYER or PSALM made by the Lord BACON, Chancellor of *England*.

MOST gracious Lord God, my merciful Father, from my youth up, my Creator, my Redeemer, my Comforter. Thou, O Lord, ſoundeſt and ſearcheſt the depths and ſecrets of all hearts: thou acknowledgeſt the upright of heart: thou judgeſt the hypocrite: thou pondereſt mens thoughts and doings as in a balance: thou meaſureſt their intentions as with a line; vanity and crooked ways cannot be hid from thee.

REMEMBER, O Lord, how thy ſervant hath walked before thee: remember what I have firſt ſought; and what hath been principal in my intentions. I have loved thy aſſemblies: I have mourned for the diviſions of thy church: I have delighted in the brightneſs of thy ſanctuary. This vine which thy right hand hath planted in this nation, I have ever prayed unto thee; that it might have the firſt and the later rain; and that it might ſtretch her branches to the ſeas and to the floods. The ſtate and bread of the poor and oppreſſed have been precious in mine eyes: I have hated all cruelty and hardneſs of heart: I have (though in a deſpiſed weed) procured the good of all men. If any have been my enemies, I thought not of them; neither hath the ſun almoſt ſet upon my diſpleaſure; but I have been as a dove, free from ſuperfluity of maliciouſneſs. Thy creatures have been my books, but thy ſcriptures much more. I have ſought thee in the courts, fields, and gardens, but I have found thee in thy temples.

THOUSANDS have been my ſins, and ten thouſands my tranſgreſſions; but thy ſanctifications have remained with me, and my heart (through thy grace) hath been an unquenched coal upon thine altar. O Lord, my ſtrength, I have ſince my youth met with thee in all my ways, by thy fatherly compaſſions, by thy comfortable chaſtiſements, and by thy moſt viſible providence. As thy favours have encreaſed upon me, ſo have thy corrections; ſo as thou haſt been always near me, O Lord; and ever as my worldly bleſſings were exalted, ſo ſecret darts from thee have pierced me; and when I have aſcended before men, I have deſcended in humiliation before thee. And now, when I thought moſt of peace and honour, thy hand is heavy upon me, and hath humbled me according to thy former loving-kindneſs, keeping me ſtill in thy fatherly ſchool, not as a baſtard, but as a child. Juſt are thy judgments upon me for my ſins, which are more in number than the ſands of the ſea, but have no proportion to thy mercies; for what are the ſands of the ſea, earth, heavens, and all theſe are nothing to thy mercies. Beſides my innumerable ſins, I confeſs before thee, that I am debtor to thee for the gracious talent of thy gifts and graces, which I have neither put into a napkin, nor put it (as I ought) to exchangers, where it might have made beſt profit, but miſpent it in things for which I was leaſt fit: ſo I may truly ſay, my ſoul hath been a ſtranger in the courſe of my pilgrimage. Be merciful unto me, O Lord, for my Saviour's ſake, and receive me into thy boſom, or guide me in thy ways.

The

The STUDENT'S Prayer. Remains, pag. 181.

TO God the Father, God the Word, God the Spirit, we pour forth moſt humble and hearty ſupplications; that he remembring the calamities of mankind, and the pilgrimage of this our life, in which we wear out days few and evil, would pleaſe to open to us new refreſhments out of the fountains of his goodneſs, for the alleviating of our miſeries. This alſo we humbly and earneſtly beg, that human things may not prejudice ſuch as are divine; neither that from the unlocking of the gates of ſenſe, and the kindling of a greater natural light, any thing of incredulity, or intellectual night, may ariſe in our minds towards divine myſteries. But rather, that by our mind thoroughly cleanſed and purged from fancy and vanities, and yet ſubject and perfectly given up to the divine oracles, there may be given unto faith the things that are faith's. *Amen.*

The WRITER'S Prayer.

THOU, O Father, who gaveſt the viſible light as the firſt-born of thy creatures, and didſt pour into man the intellectual light as the top and conſummation of thy workmanſhip, be pleaſed to protect and govern this work, which coming from thy goodneſs, returneth to thy glory. Thou after thou hadſt review'd the works which thy hands had made, beheldeſt that every thing was very good, and thou didſt reſt with complacency in them. But man reflecting on the works which he had made, ſaw that all was vanity and vexation of ſpirit, and could by no means acquieſce in them. Wherefore if we labour in thy works with the ſweat of our brows, thou wilt make us partakers of thy viſion and thy ſabbath. We humbly beg that this mind may be ſtedfaſtly in us; and that thou, by our hands, and alſo by the hands of others, on whom thou ſhalt beſtow the ſame ſpirit, wilt pleaſe to convey a largeſs of new alms to thy family of mankind. Theſe things we commend to thy everlaſting love, by our Jeſus, thy Chriſt, God with us. *Amen.*

THE TRANSLATION OF CERTAIN PSALMS INTO ENGLISH VERSE.

BY THE

RIGHT HONOURABLE

FRANCIS

Lord *VERULAM*, Viſcount *ST. ALBAN.*

To his very good Friend,

Mr. *GEORGE HERBERT.*

THE pains that it pleaſed you to take about ſome of my writings, I cannot forget; which did put me in mind to dedicate to you this poor exerciſe of my ſickneſs. Beſides, it being my manner for dedications, to chooſe thoſe that I hold moſt fit for the argument, I thought, that in reſpect of divinity and poeſy met, (whereof the one is the matter, the other the ſtyle of this little writing,) I could not make better choice: So, with ſignification of my love and acknowledgment, I ever reſt

Your affectionate Friend,

FR. ST. ALBAN.

THE TRANSLATION OF THE FIRST PSALM.

WHO never gave to wicked reed,
A yielding and attentive ear:
Who never ſinners paths did tread,
Nor ſate him down in ſcorners chair:
But maketh it his whole delight,
On law of God to meditate;
And therein ſpendeth day and night;
That man is in a happy ſtate.

He ſhall be like the fruitful tree,
Planted along a running ſpring,
Which in due ſeaſon, conſtantly,
A goodly yield of fruit doth bring.
Whoſe leaves continue always green,
And are no prey to winter's power:
So ſhall that man not once be ſeen
Surprized with an evil hour.

With wicked men it is not ſo,
Their lot is of another kind:
All as the chaff, which to and fro,
Is toſs'd at mercy of the wind.
And when he ſhall in judgment plead,
A caſting ſentence bide he muſt:
So ſhall he not lift up his head,
In the aſſembly of the juſt.

For why? the Lord hath ſpecial eye,
To be the godly's ſtay at call:
And hath given over, righteouſly,
The wicked man to take his fall.

The Tranſlation of PSALM XII.

HELP, Lord, for godly men have took their flight,
And left the earth to be the wicked's den:
Not one that ſtandeth faſt to truth and right,
But fears, or ſeeks to pleaſe, the eyes of men.
When one with other falls in talk apart,
Their meaning goeth not with their words, in proof;
But fair they flatter, with a cloven heart,
By pleaſing words, to work their own behoof.

But

But God cut off the lips, that are all ſet,
To trap the harmleſs ſoul, that peace hath vow'd;
And pierce the tongues, that ſeek to counterfeit
The confidence of truth, by lying loud:
Yet ſo they think to reign, and work their will
By ſuttle ſpeech, which enters every where;
And ſay, our tongues are ours, to help us ſtill,
What need we any higher power to fear?

Now for the bitter ſighing of the poor,
The Lord hath ſaid, I will no more forbear,
The wicked's kingdom to invade and ſcour,
And ſet at large the men reſtrain'd in fear.
And ſure the word of God is pure and fine,
And in the trial never loſeth weight;
Like noble gold, which ſince it left the mine,
Hath ſeven times paſſed through the fiery ſtrait.

And now thou wilt not firſt thy word forſake,
Nor yet the righteous man that leans thereto;
But wilt his ſafe protection undertake,
In ſpight of all their force and wiles can do.
And time it is, O Lord, thou didſt draw nigh;
The wicked daily do enlarge their bands;
And that which makes them follow ill a vie,
Rule is betaken to unworthy hands.

The Tranſlation of PSALM XC.

O Lord, thou art our home, to whom we fly,
And ſo haſt always been from age to age;
Before the hills did intercept the eye,
Or that the frame was up of earthly ſtage!
One God thou wert, and art, and ſtill ſhalt be;
The line of time, it doth not meaſure thee.

Both death and life obey thy holy lore,
And viſit in their turns, as they are ſent;
A thouſand years with thee, they are no more
Than yeſterday, which, ere it is, is ſpent:
Or as a watch by night, that courſe doth keep,
And goes, and comes, unwares to them that ſleep.

Thou carrieſt man away as with a tide:
Then down ſwim all his thoughts, that mounted high;
Much like a mocking dream, that will not bide,
But flies before the ſight of waking eye;
Or as the graſs, that cannot term obtain,
To ſee the ſummer come about again.

At

At morning, fair it muſters, on the ground,
At even it's cut down, and laid along:
And though it ſpared were, and favour found,
The weather would perform the mower's wrong:
  Thus haſt thou hang'd our life on brittle pins,
  To let us know it will not bear our ſins.

Thou burieſt not within oblivion's tomb
Our treſpaſſes, but entereſt them aright;
Even thoſe that are conceiv'd in darkneſs' womb,
To thee appear as done at broad day-light.
  As a tale told, which ſometimes men attend,
  And ſometimes not, our life ſteals to an end.

The life of man is threeſcore years and ten,
Or if that he be ſtrong, perhaps fourſcore,
Yet all things are but labour to him then,
New ſorrows ſtill come on, pleaſures no more;
  Why ſhould there be ſuch turmoil and ſuch ſtrife
  To ſpin in length this feeble line of life?

But who conſiders duly of thine ire?
Or doth the thoughts thereof wiſely embrace?
For thou, O God, art a conſuming fire,
Frail man, how can he ſtand before thy face?
  If thy diſpleaſure thou doſt not refrain,
  A moment brings all back to duſt again.

Teach us, O Lord, to number well our days,
Thereby our hearts to wiſdom to apply;
For that which guides man beſt in all his ways,
Is meditation of mortality.
  This bubble light, this vapour of our breath,
  Teach us to conſecrate to hour of death.

Return unto us, Lord, and balance now
With days of joy, our days of miſery;
Help us right ſoon, our knees to thee we bow,
Depending wholly on thy clemency;
  Then ſhall thy ſervants both with heart and voice,
  All the days of their life in thee rejoice.

Begin thy work, O Lord, in this our age,
Shew it unto thy ſervants that now live;
But to our children raiſe it many a ſtage,
That all the world to thee may glory give.
  Our handy-work likewiſe, as fruitful tree,
  Let it, O Lord, bleſſed, not blaſted be.

The Tranſlation of PSALM CIV.

FAther and King of powers, both high and low,
Whoſe ſounding fame all creatures ſerve to blow;
My ſoul ſhall with the reſt ſtrike up thy praiſe,
And carol of thy works, and wondrous ways.
But who can blaze thy beauties, Lord, aright?
They turn the brittle beams of mortal ſight.
Upon thy head thou wear'ſt a glorious crown,
All ſet with virtues, poliſh'd with renown:
Thence round about a ſilver veil doth fall
Of cryſtal light, mother of colours all.
The compaſs heaven, ſmooth without grain, or fold;
All ſet with ſpangs of glitt'ring ſtars untold,
And ſtripe'd with golden beams of power unpent;
Is raiſed up for a removing tent.
Vaulted and arched are his chamber beams,
Upon the ſeas, the waters, and the ſtreams:
The clouds as chariots ſwift do ſcour the ſky;
The ſtormy winds upon their wings do fly.
His angels ſpirits are, that wait his will,
As flames of fire his anger they fulfil.
In the beginning with a mighty hand,
He made the earth by counterpoiſe to ſtand;
Never to move, but to be fixed ſtill;
Yet hath no pillars but his ſacred will.
This earth, as with a veil, once cover'd was,
The waters over-flowed all the maſs:
But upon his rebuke away they fled,
And then the hills began to ſhew their head;
The vales their hollow boſoms opened plain,
The ſtreams ran trembling down the vales again:
And that the earth no more might drowned be
He ſet the ſea his bounds of liberty;
And though his waves reſound, and beat the ſhore,
Yet it is bridled by his holy lore.
Then did the rivers ſeek their proper places,
And found their heads, their iſſues, and their races;
The ſprings do feed the rivers all the way,
And ſo the tribute to the ſea repay:
Running along through many a pleaſant field,
Much fruitfulneſs unto the earth they yield;
That know the beaſts and cattle feeding by,
Which for to ſlake their thirſt do thither hie.
Nay, deſert grounds the ſtreams do not forſake,
But through the unknown ways their journey take:
The aſſes wild that hide in wilderneſs,
Do thither come, their thirſt for to refreſh.
The ſhady trees along their banks do ſpring,
In which the birds do build, and ſit, and ſing;

Stroking the gentle air with pleaſant notes,
Plaining or chirping through their warbling throats.
The higher grounds, where waters cannot riſe,
By rain and dews are water'd from the ſkies;
Cauſing the earth put forth the graſs for beaſts,
And garden herbs, ſerv'd at the greateſt feaſts;
And bread that is all viands firmament,
And gives a firm and ſolid nouriſhment;
And wine man's ſpirits for to recreate;
And oil his face for to exhilarate.
The ſappy cedars tall like ſtately towers,
High flying birds do harbour in their bowers;
The holy ſtorks that are the travellers,
Chooſe for to dwell and build within the firs;
The climbing goats hang on ſteep mountains ſide;
The digging conies in the rocks do bide;
The moon, ſo conſtant in inconſtancy,
Doth rule the monthly ſeaſons orderly;
The ſun, eye of the world, doth know his race,
And when to ſhew, and when to hide his face.
Thou makeſt darkneſs, that it may be night,
When as the ſavage beaſts that fly the light,
(As conſcious of man's hatred) leave their den,
And range abroad, ſecur'd from ſight of men.
Then do the foreſts ring of lions roaring,
That aſk their meat of God, their ſtrength reſtoring;
But when the day appears, they back do fly,
And in their dens again do lurking lie.
Then man goes forth to labour in the field,
Whereby his grounds more rich encreaſe may yield.
O Lord, thy providence ſufficeth all,
Thy goodneſs not reſtrain'd but general
Over thy creatures, the whole earth doth flow
With thy great largeſs pour'd forth here below.
Nor is it earth alone exalts thy name,
But ſeas and ſtreams likewiſe do ſpread the ſame.
The rowling ſeas unto the lot doth fall,
Of beaſts innumerable, great and ſmall;
There do the ſtately ſhips plow up the floods,
The greater navies look like walking woods;
The fiſhes there far voyages do make,
To divers ſhores their journey they do take;
There haſt thou ſet the great Leviathan,
That makes the ſeas to ſeeth like boiling pan;
All theſe do aſk of thee their meat to live
Which in due ſeaſon thou to them doſt give.
Ope thou thy hand, and then they have good fare;
Shut thou thy hand, and then they troubled are.
All life, and ſpirit, from thy breath proceed,
Thy word doth all things generate and feed;
If thou withdraw'ſt it, then they ceaſe to be,
And ſtrait return to duſt and vanity;

But

But when thy breath thou doſt ſend forth again,
Then all things do renew, and ſpring amain;
So that the earth, but lately deſolate,
Doth now return unto the former ſtate.
The glorious Majeſty of God above,
Shall ever reign, in mercy, and in love;
God ſhall rejoice, all his fair works to ſee,
For, as they come from him, all perfect be.
The earth ſhall quake, if aught his wrath provoke,
Let him but touch the mountains, they ſhall ſmoke.
As long as life doth laſt, I hymns will ſing,
With chearful voice, to the eternal King;
As long as I have being, I will praiſe
The works of God, and all his wondrous ways.
I know that he my words will not deſpiſe,
Thankſgiving is to him a ſacrifice.
But as for ſinners, they ſhall be deſtroy'd
From off the earth, their places ſhall be void.
Let all his works praiſe him with one accord;
Oh praiſe the Lord, my ſoul; praiſe ye the Lord!

The Tranſlation of PSALM CXXVI.

WHEN God return'd us graciouſly
Unto our native land,
We ſeem'd as in a dream to be,
And in a maze to ſtand.

The heathen likewiſe they could ſay,
The God, that theſe men ſerve,
Hath done great things for them this day,
Their nation to preſerve.

'Tis true, God hath pour'd out his grace
On us abundantly,
For which we yield him pſalms, and praiſe,
And thanks, with jubilee.

O Lord, turn our captivity,
As winds that blow at ſouth,
Do pour the tides with violence
Back to the rivers mouth.

Who ſows in tears, ſhall reap in joy,
The Lord doth ſo ordain;
So that his ſeed be pure and good,
His harveſt ſhall be gain.

The Tranſlation of PSALM CXXXVII.

WHEN as we ſat all ſad and deſolate,
By *Babylon*, upon the river's ſide,
Eas'd from the taſks, which in our captive ſtate,
We were enforced daily to abide,
Our harps we had brought with us to the field,
Some ſolace to our heavy ſouls to yield.

But ſoon we found we fail'd of our account,
For when our minds ſome freedom did obtain,
Straitways the memory of *Sion Mount*,
Did cauſe afreſh our wounds to bleed again;
So that with preſent griefs, and future fears,
Our eyes burſt forth into a ſtream of tears.

As for our harps, ſince ſorrow ſtruck them dumb,
We hang'd them on the willow trees were near;
Yet did our cruel maſters to us come,
Aſking of us ſome *Hebrew* ſongs to hear;
Taunting us rather in our miſery,
Than much delighting in our melody.

Alas (ſaid we) who can once force or frame,
His grieved and oppreſſed heart to ſing
The praiſes of *Jehovah*'s glorious name,
In baniſhment, under a foreign King?
In *Sion* is his ſeat and dwelling-place,
Thence doth he ſhew the brightneſs of his face.

Jeruſalem, where God his throne hath ſet,
Shall any hour abſent thee from my mind?
Then let my right hand quite her ſkill forget,
Then let my voice and words no paſſage find;
Nay if I do not thee prefer in all,
That in the compaſs of my thoughts can fall.

Remember thou, O Lord, the cruel cry
Of *Edom*'s children, which did ring and ſound,
Inciting the *Chaldean*'s cruelty,
Down with it, down with it, even unto the ground.
In that good day repay it unto them
When thou ſhalt viſit thy *Jeruſalem*.

And thou, O *Babylon*, ſhalt have thy turn
By juſt revenge, and happy ſhall he be,
That thy proud walls and tow'rs ſhall waſte and burn,
And as thou didſt by us, ſo do by thee.
Yea happy he, that takes thy childrens bones,
And daſheth them againſt the pavement ſtones.

The Tranſlation of PSALM CXLIX.

O Sing a new ſong to our God above,
Avoid profane ones, 'tis for holy quire:
Let *Iſrael* ſing ſongs of holy love
To him that made them, with their hearts on fire:
Let *Sion*'s ſons lift up their voice, and ſing
Carols and anthems to their heavenly King.

Let not your voice alone his praiſe forth tell,
But move withal, and praiſe him in the dance;
Cymbals and harps let them be tuned well,
'Tis he that doth the poor's eſtate advance:
Do this not only on the ſolemn days,
But on your ſecret beds your ſpirits raiſe.

O let the ſaints bear in their mouth his praiſe,
And a two-edged ſword drawn in their hand,
Therewith for to revenge the former days,
Upon all nations that their zeal withſtand;
To bind their Kings in chains of iron ſtrong,
And manacle their nobles for their wrong.

Expect the time, for 'tis decreed in Heaven,
Such honour ſhall unto his ſaints be given.

PIECES

ASCRIBED TO

LORD *BACON*,

Publiſhed in his *Remains* in 1648, in Quarto.

An Explanation what manner of Perſons thoſe ſhould be that are to execute the Power or Ordinance of the King's Prerogative.

1. THAT abſolute prerogative, according to the King's pleaſure, revealed by his laws, may be exerciſed and executed by any ſubject, to whom power may be given by the King, in any place of judgment or commiſſion, which the King by his law hath ordained: in which the judge ſubordinate cannot wrong the people, the law laying down a meaſure by which every judge ſhould govern and execute; againſt which law, if any judge proceed, he is by the law queſtionable, and puniſhable for his tranſgreſſion.

In this nature are all the judges and commiſſioners of the land, no otherwiſe than in their courts, in which the King in perſon is ſuppoſed to ſit, who cannot make that treſpaſs, felony, or treaſon, which the law hath not made ſo to be, neither can puniſh the guilty by other puniſhment than the laws have appointed.

This prerogative or power as it is over all the ſubjects, ſo being known by the ſubjects, they are without excuſe if they offend, and ſuffer no wrong if they be juſtly puniſhed; and by this prerogative the King governeth all ſorts of people according unto known will.

2. The abſolute prerogative, which is in Kings according to their private will and judgment, cannot be executed by any ſubject; neither is it poſſible to give ſuch power by commiſſion, or fit to ſubject the people to the ſame: for the King, in that he is the ſubſtitute of God immediately, the father of his people, and head of the commonwealth, hath, by participation with God, and with his ſubjects, a diſcretion, judgment, and feeling love towards thoſe over whom he reigneth, only proper to himſelf, or to his place and perſon; who ſeeing he cannot in any others infuſe his wiſdom, power, or gifts, which God, in reſpect of his place and charge, hath enabled him withal, can neither ſubordinate any other judge to govern by that knowledge, which

which the King can no otherwiſe than by his known will participate unto him: and if any ſuch ſubordinate judge ſhall obtain commiſſion according to the diſcretion of ſuch judge to govern the people, that judge is bound to think, that to be his ſoundeſt diſcretion, which the law (in which is the King's known will) ſheweth unto him to be that juſtice which he ought to adminiſter; otherwiſe he might ſeem to eſteem himſelf above the King's law, who will not govern by it, or to have a power derived from other than from the King, which in the kingdom will adminiſter juſtice contrary unto the juſtice of the land: neither can ſuch a judge or commiſſioner, under the name of the King's authority, ſhroud his own high action, ſeeing the conſcience and diſcretion of every man is particular and private to himſelf, ſo as the diſcretion of the judge cannot be properly or poſſibly the diſcretion or the conſcience of the King; and if not his diſcretion, neither the judgment that is ruled by another man's only.

THEREFORE it may ſeem they rather deſire to be Kings, than to rule the people under the King, which will not adminiſter juſtice by law, but by their own will.

3. THIS adminiſtration in a ſubject is derogative to the King's prerogative; for he adminiſtreth juſtice out of a private direction, being not capable of a general direction how to uſe the King's ſubjects at pleaſure, in cauſes of particular reſpect; which if no other than the King himſelf can do, how can it be ſo that any man ſhould deſire that which is unfit and impoſſible, but that it muſt proceed out of ſome exorbitant affection? the rather, ſeeing ſuch places be full of trouble, and altogether unneceſſary, no man will ſeek to thruſt himſelf into them but for hopes of gain. Then is not any prerogative oppugned, but maintained, though it be deſired, that every ſubordinate magiſtrate may not be made ſupreme, whereby he may ſeize upon the hearts of the people, take from the King the reſpect due unto him only, or judge the people otherwiſe than the King doth himſelf.

4. AND although the Prince be not bound to render any account to the law, which in perſon he adminiſtreth himſelf, yet every ſubordinate judge muſt render an account to the King, by his laws, how he hath adminiſtred juſtice in his place where he is ſet. But if he hath power to rule by private direction, for which there is no law, how can he be queſtioned by a law, if in his private cenſure he offends?

5. THEREFORE, it ſeemeth, that in giving ſuch authority, the King ordaineth not ſubordinate magiſtrates, but abſolute Kings; and what doth the King leave to himſelf, who giveth ſo much to others, as he hath himſelf? Neither is there a greater bond to tye the ſubject to his Prince in particular, than when he ſhall have recourſe unto him, in his perſon, or in his power, for relief of the wrongs which from private men be offered; or for reformation of the oppreſſions which any ſubordinate magiſtrate ſhall impoſe upon the people. There can be no offence in the judge, who hath power to execute according to his diſcretion, when the diſcretion of any judge ſhall be thought fit to be limited, and therefore there can be therein no reformation; whereby the King in this uſeth no prerogative to gain his ſubjects right; then the ſubject is bound to ſuffer helpleſs wrong; and the diſcontent of the people is caſt upon the King; the laws being neglected, which with their equity in all other cauſes and judgments (ſaving this) interpoſe themſelves and yield remedy.

6. AND to conclude, cuſtom cannot confirm that which is any ways unreaſonable of itſelf.

WISDOM will not allow that, which is many ways dangerous, and no ways profitable.

JUSTICE will not approve that government, where it cannot be but wrong muſt be committed.

NEITHER can there be any rule by which to try it, nor means of reformation of it.

7. THEREFORE, whoſoever deſireth government, muſt ſeek ſuch as he is capable of, not ſuch as ſeemeth to himſelf moſt eaſy to execute; for it is apparent, that it is eaſy to him that knoweth not law nor juſtice, to rule as he liſteth, his will never wanting a power to itſelf: But it is ſafe and blameleſs, both for the judge and people, and honour to the King, that judges be appointed who know the law, and that they be limited to govern according to the law.

Short Notes for Civil Converſation.

1. TO deceive mens expectations generally (with cautel) argueth a ſtaid mind, and unexpected conſtancy, *viz.* in matters of fear, anger, ſudden joy or grief, and all things which may affect or alter the mind in publick or ſudden accidents, or ſuch like.

2. IT is neceſſary to uſe a ſtedfaſt countenance, not wavering with action, as in moving the head or hand too much, which ſheweth a fantaſtical light and fickle operation of the ſpirit, and conſequently like mind as geſture: only it is ſufficient, with leiſure, to uſe a modeſt action in either.

3. IN all kinds of ſpeech, either pleaſant, grave, ſevere, or ordinary, it is convenient to ſpeak leiſurely, and rather drawingly, than haſtily; becauſe haſty ſpeech confounds the memory, and oftentimes (beſides unſeemlineſs) drives a man either to a *non-plus* or unſeemly ſtammering, harping upon that which ſhould follow; whereas a ſlow ſpeech confirmeth the memory, addeth a conceit of wiſdom to the hearers, beſides a ſeemlineſs of ſpeech and countenance.

4. TO deſire in diſcourſe, to hold all arguments, is ridiculous, wanting true judgment; for in all things no man can be exquiſite.

5, 6. TO have common places to diſcourſe and to want variety, is both tedious to the hearers, and ſhews a ſhallowneſs of conceit; therefore it is good to vary, and ſuit ſpeeches with the preſent occaſions; and to have a moderation in all our ſpeeches, eſpecially in jeſting, of religion, ſtate, great perſons, weighty and important buſineſs, poverty, or any thing deſerving pity.

7. A long continued ſpeech, without a good ſpeech of interlocution, ſheweth ſlowneſs; and a good reply, without a good ſet ſpeech, ſheweth ſhallowneſs and weakneſs.

8. TO uſe many circumſtances, ere you come to matter, is wearifome; and to uſe none at all, is but blunt.

9. BASHFULNESS is a great hindrance to a man, both of uttering his conceit, and underſtanding what is propounded unto him: wherefore, it is good to preſs himſelf forwards with diſcretion, both in ſpeech, and company of the better ſort.

Uſus promptos facit.

An ESSAY on DEATH.

1. I HAVE often thought upon death, and I find it the leaſt of all evils. All that which is paſt is as a dream; and he that hopes or depends upon time coming, dreams waking. So much of our life as we have diſcovered is already dead; and all thoſe hours which we ſhare, even from the breaſts of our mother, until we return to our grand-mother the earth, are part of our dying days; whereof even this is one, and thoſe that ſucceed are of the ſame nature, for we die daily; and as others have given place to us, ſo we muſt in the end give way to others.

2. PHYSICIANS in the name of death, include all ſorrow, anguiſh, diſeaſe, calamity, or whatſoever can fall in the life of man, either grievous or unwelcome: But theſe things are familiar unto us, and we ſuffer them every hour; therefore we die daily, and I am older ſince I affirmed it.

3. I KNOW many wiſe men, that fear to die; for the change is bitter, and fleſh would refuſe to prove it: beſides, the expectation brings terror, and that exceeds the evil. But I do not believe, that any man fears to be dead, but only the ſtroke of death; and ſuch are my hopes, that if heaven be pleaſed, and nature renew but my leaſe for twenty one years more, without asking longer days, I ſhall be ſtrong enough to acknowledge without mourning, that I was begotten mortal. Virtue walks not in the high-way, though ſhe go *per alta*; this is ſtrength and the blood to virtue, to contemn things that be deſired, and to neglect that which is feared.

4. WHY ſhould man be in love with his fetters, though of gold? Art thou drowned in ſecurity? Then I ſay thou art perfectly dead. For though thou moveſt, yet thy ſoul is buried within thee, and thy good angel either forſakes his guard or ſleeps. There is nothing under heaven, ſaving a true friend, (who cannot be counted within the number of moveables) unto which my heart doth lean. And this dear freedom hath begotten me this peace, that I mourn not for that end which muſt be, nor ſpend one wiſh to have one minute added to the incertain date of my years. It was no mean apprehenſion of *Lucian*, who ſays of *Menippus*, that in his travels through hell, he knew not the Kings of the earth from other men, but only by their louder cryings and tears: which was foſtered in them through the remorſeful memory of the good days they had ſeen, and the fruitful havings which they ſo unwillingly left behind them: he that was well ſeated, looked back at his portion, and was loth to forſake his farm; and others either minding marriages, pleaſures, profit, or preferment, deſired to be excuſed from death's banquet: they had made an appointment with earth, looking at the bleſſings, not the hand that enlarged them, forgetting how unclothedly they came hither, or with what naked ornaments they were arrayed.

5. BUT were we ſervants of the precept given, and obſervers of the heathens rule *memento mori*, and not become benighted with this ſeeming felicity, we ſhould enjoy it as men prepared to loſe, and not wind up our thoughts upon ſo periſhing a fortune: he that is not ſlackly ſtrong (as the ſervants of pleaſure) how can he be found unready to quit the veil and falſe viſage of his perfection? The ſoul having ſhaken off her fleſh, doth then ſet up for herſelf, and contemning things that are under, ſhews what finger hath enforced her; for the ſouls of ideots are of the ſame piece with thoſe of ſtateſmen, but now and then nature is at a fault, and this good gueſt of ours,

takes ſoil in an imperfect body, and ſo is ſlackened from ſhewing her wonders; like an excellent muſician, which cannot utter himſelf upon a defective inſtrument.

6. But ſee how I am ſwerved, and loſe my courſe, touching at the ſoul that doth leaſt hold action with death, who hath the ſureſt property in this frail act; his ſtyle is the end of all fleſh, and the beginning of incorruption.

This ruler of monuments, leads men for the moſt part out of this world with their heels forward; in token that he is contrary to life; which being obtained, ſends man headlong into this wretched theatre, where being arrived, their firſt language is that of mourning. Nor in my own thoughts, can I compare men more fitly to any thing, than to the *Indian* fig-tree, which being ripened to his full height, is ſaid to decline his branches down to the earth; whereof ſhe conceives again, and they become roots in their own ſtock.

So man having derived his being from the earth, firſt lives the life of a tree, drawing his nouriſhment as a plant, and made ripe for death he tends downwards, and is ſowed again in his mother the earth, where he periſheth not, but expects a quickening.

7. So we ſee death exempts not a man from being, but only preſents an alteration; yet there are ſome men (I think) that ſtand otherwiſe perſuaded. Death finds not a worſe friend than an alderman, to whoſe door I never knew him welcome; but he is an importunate gueſt, and will not be ſaid nay.

And though they themſelves ſhall affirm, that they are not within, yet the anſwer will not be taken; and that which heightens their fear is, that they know they are in danger to forfeit their fleſh, but are not wiſe of the payment day: which fickly uncertainty, is the occaſion that (for the moſt part) they ſtep out of this world unfurniſhed for their general account, and being all unprovided, deſire yet to hold their gravity, preparing their ſouls to anſwer in ſcarlet.

Thus I gather, that death is diſagreeable to moſt citizens, becauſe they commonly die inteſtate; this being a rule, that when their will is made, they think themſelves nearer a grave than before: now they, out of the wiſdom of thouſands, think to ſcare deſtiny, from which there is no appeal, by not making a will, or to live longer by proteſtation of their unwillingneſs to die. They are for the moſt part well made in this world (accounting their treaſure by legions, as men do devils:) their fortune looks toward them, and they are willing to anchor at it, and deſire (if it be poſſible) to put the evil day far off from them, and to adjourn their ungrateful and killing period.

No, theſe are not the men which have beſpoken death, or whoſe looks are aſſured to entertain a thought of him.

8. Death arrives gracious only to ſuch as ſit in darkneſs, or lie heavy burthened with grief and irons; to the poor Chriſtian, that ſits bound in the galley; to deſpairful widows, penſive priſoners, and depoſed Kings; to them, whoſe fortune runs back, and whoſe ſpirit mutinies; unto ſuch death is a redeemer, and the grave a place for retiredneſs and reſt.

These wait upon the ſhore of death, and waft unto him to draw near, wiſhing above all others, to ſee his ſtar, that they might be led to his place; wooing the remorſeleſs ſiſters to wind down the watch of their life, and to break them off before the hour.

9. But death is a doleful meſſenger to an uſurer, and fate untimely cuts their thread; for it is never mentioned by him, but when rumours of war, and civil tumults put him in mind thereof.

And

And when many hands are armed, and the peace of a city in diſorder, and the foot of the common ſoldiers ſounds an alarm on his ſtairs, then perhaps ſuch a one (broken in thoughts of his moneys abroad, and curſing the monuments of coin which are in his houſe) can be content to think of death, and (being haſty of perdition) will perhaps hang himſelf, leſt his throat ſhould be cut; provided, that he may do it in his ſtudy, ſurrounded with wealth, to which his eye ſends a faint and languiſhing ſalute, even upon the turning off; remembring always, that he have time and liberty, by writing, to depute himſelf as his own heir.

For that is a great peace to his end, and reconciles him wonderfully upon the point.

10. Herein we all dally with our ſelves, and are without proof till neceſſity. I am not of thoſe, that dare promiſe to pine away my ſelf in vain-glory, and I hold ſuch to be but feat boldneſs, and them that dare commit it, to be vain. Yet for my part, I think nature ſhould do me great wrong, if I ſhould be ſo long in dying, as I was in being born.

To ſpeak truth, no man knows the liſts of his own patience; nor can divine how able he ſhall be in his ſufferings, till the ſtorm come (the perfecteſt virtue being tried in action:) but I would (out of a care to do the beſt buſineſs well) ever keep a guard, and ſtand upon keeping faith and a good conſcience.

11. And if wiſhes might find place, I would die together, and not my mind often, and my body once; that is, I would prepare for the meſſengers of death, ſickneſs, and affliction, and not wait long, or be attempted by the violence of pain.

Herein I do not profeſs myſelf a Stoick, to hold grief no evil, but opinion, and a thing indifferent.

But I conſent with *Caeſar*, and that the ſuddeneſt paſſage is eaſieſt, and there is nothing more awakens our reſolve and readineſs to die than the quieted conſcience, ſtrengthened with opinion, that we ſhall be well ſpoken of upon earth by thoſe that are juſt, and of the family of virtue; the oppoſite whereof, is a fury to man, and makes even life unſweet.

Therefore, what is more heavy than evil fame deſerved? Or likewiſe, who can ſee worſe days, than he that yet living doth follow at the funerals of his own reputation?

I have laid up many hopes, that I am privileged from that kind of mourning, and could wiſh that like peace to all thoſe with whom I wage love.

12. I might ſay much of the commodities that death can ſell a man; but briefly, death is a friend of ours, and he that is not ready to entertain him, is not at home. Whilſt I am, my ambition is not to fore-flow the tide; I have but ſo to make my intereſt of it as I may account for it; I would wiſh nothing but what might better my days, nor deſire any greater place than the front of good opinion. I make not love to the continuance of days, but to the goodneſs of them; nor wiſh to die, but refer my ſelf to my hour, which the great diſpenſer of all things hath appointed me; yet as I am frail, and ſuffered for the firſt fault, were it given me to chuſe, I ſhould not be earneſt to ſee the evening of my age; that extremity of it ſelf being a diſeaſe, and a mere return into infancy: ſo that if perpetuity of life might be given me, I ſhould think what the *Greek* poet ſaid, ſuch an age is a mortal evil. And ſince I muſt needs be dead, I require it may not be done before mine enemies, that I be not ſtript before I be cold; but before my friends. The night was even now; but that name

is

is loſt; it is not now too late, but early. Mine eyes begin to diſcharge their watch, and compound with this fleſhly weakneſs for a time of perpetual reſt; and I ſhall preſently be as happy for a few hours, as I had died the firſt hour I was born.

The Characters of a believing Chriſtian, in Paradoxes, and ſeeming Contradictions. Compared with the Copy printed *Lond.* 1645.

I. A Chriſtian is one that believes things his reaſon cannot comprehend; he hopes for things which neither he nor any man alive ever ſaw: he labours for that which he knoweth he ſhall never obtain; yet in the iſſue, his belief appears not to be falſe; his hope makes him not aſhamed; his labour is not in vain.

II. He believes three to be one, and one to be three; a Father not to be elder than his Son; a Son to be equal with his Father; and one proceeding from both to be equal with both; he believing three perſons in one nature, and two natures in one perſon.

III. He believes a Virgin to be a Mother of a Son; and that very Son of hers to be her Maker. He believes him to have been ſhut up in a narrow room, whom heaven and earth could not contain. He believes him to have been born in time, who was and is from everlaſting. He believes him to have been a weak child carried in arms, who is the Almighty; and him once to have died, who only hath life and immortality in himſelf.

IV. He believes the God of all grace to have been angry with one that hath never offended him; and that God, that hates ſin, to be reconciled to himſelf, though ſinning continually, and never making or being able to make him ſatisfaction. He believes a moſt juſt God to have puniſhed a moſt juſt perſon, and to have juſtified himſelf though a moſt ungodly ſinner. He believes himſelf freely pardoned, and yet a ſufficient ſatisfaction was made for him.

V. He believes himſelf to be precious in God's ſight, and yet loaths himſelf in his own. He dares not juſtify himſelf even in thoſe things wherein he can find no fault with himſelf, and yet believes God accepts him in thoſe ſervices wherein he is able to find many faults.

VI. He praiſes God for his juſtice, and yet fears him for his mercy. He is ſo aſhamed as that he dares not open his mouth before God; and yet he comes with boldneſs to God, and aſks him any thing he needs. He is ſo humble as to acknowledge himſelf to deſerve nothing but evil; and yet believes that God means him all good. He is one that fears always, yet is as bold as a lion. He is often ſorrowful, yet always rejoicing; many times complaining, yet always giving of thanks. He is the moſt lowly-minded yet the greateſt aſpirer; moſt contented, yet ever craving.

VII. He bears a lofty ſpirit in a mean condition; when he is ableſt he thinks meaneſt of himſelf. He is rich in poverty, and poor in the midſt of riches. He believes all the world to be his, yet he dares take nothing without ſpecial leave from God. He covenants with God for nothing, yet looks for a great reward. He loſeth his life and gains by it; and whilſt he loſeth it, he ſaveth it.

VIII. He lives not to himſelf, yet of all others he is moſt wiſe for himſelf. He denieth himſelf often, yet no man loveth himſelf ſo well as he. He is moſt reproached, yet moſt honoured. He hath moſt afflictions, and moſt comforts.

IX. The more injury his enemies do him, the more advantages he gains by them. The more he forſakes worldly things, the more he enjoys them.

X. He is the moſt temperate of all men, yet fares moſt deliciouſly; he lends and gives moſt freely, yet he is the greateſt uſurer; he is meek towards all men, yet inexorable by men. He is the beſt child, huſband, brother, friend; yet hates father and mother, brother and ſiſter. He loves all men as himſelf, yet hates ſome men with a perfect hatred.

XI. He deſires to have more grace than any man hath in the world, yet is truly ſorrowful when he ſeeth any man have leſs than himſelf; he knoweth no man after the fleſh, yet gives all men their due reſpects; he knoweth if he pleaſe man he cannot be the ſervant of Chriſt; yet for Chriſt's ſake he pleaſeth all men in all things. He is a peace-maker, yet is a continual fighter, and an irreconcilable enemy.

XII. He believes him to be worſe than an infidel that provides not for his family, yet himſelf lives and dies without care. He accounts all his ſuperiors, yet ſtands ſtiffly upon authority. He is ſevere to his children, becauſe he loveth them; and by being favourable unto his enemy, he revengeth himſelf upon him.

XIII. He believes the angels to be more excellent creatures than himſelf, and yet counts them his ſervants. He believes that he receives many good things by their means, and yet he neither prays for their aſſiſtance, nor offers them thanks, which he doth not diſdain to do to the meaneſt Chriſtian.

XIV. He believes himſelf to be a King, how mean ſoever he be; and how great ſoever he be, yet he thinks himſelf not too good to be a ſervant to the pooreſt ſaint.

XV. He is often in priſon, yet always at liberty: a freeman though a ſervant. He loves not honour amongſt men, yet highly prizeth a good name.

XVI. He believes that God hath bidden every man that doth him good, to do ſo; he yet of any man is the moſt thankful to them that do aught for him. He would lay down his life to ſave the ſoul of his enemy, yet will not adventure upon one ſin to ſave the life of him, who ſaved his.

XVII. He ſwears to his own hindrance, and changeth not; yet knoweth that his oath cannot tie him to ſin.

XVIII. He believes Chriſt to have no need of any thing he doth, yet maketh account that he doth relieve Chriſt in all his acts of charity. He knoweth he can do nothing of himſelf, yet labours to work out his own ſalvation. He profeſſeth he can do nothing, yet as truly profeſſeth he can do all things: he knoweth that fleſh and blood cannot inherit the kingdom of God, yet believeth he ſhall go to heaven both body and ſoul.

XIX. He trembles at God's word, yet counts it ſweeter to him than honey, and the honey-comb, and dearer than thouſands of gold and ſilver.

XX. He believes that God will never damn him, and yet fears God for being able to caſt him into hell. He knoweth he ſhall not be ſaved by, nor for his good works, yet he doth all the good works he can.

XXI. He knoweth God's providence is in all things, yet is ſo diligent in his calling and buſineſs, as if he were to cut out the thread of his happineſs. He believes before-hand that God hath purpoſed what he ſhall be, and that

nothing can make him to alter his purpoſe; yet prays and endeavours, as if he would force God to ſave him for ever.

XXII. He prays and labours for that which he is confident God means to give; and the more aſſured he is, the more earneſt he prays for that he knows he ſhall never obtain, and yet gives not over. He prays and labours for that which he knows he ſhall be no leſs happy without; he prays with all his heart not to be led into temptation, yet rejoiceth when he is fallen into it; he believes his prayers are heard, even when they are denied, and gives thanks for that, which he prays againſt.

XXIII. He hath within him both fleſh and ſpirit, yet he is not a double-minded man; he is often led captive by the law of ſin, yet it never gets dominion over him; he cannot ſin, yet can do nothing without ſin: He doth nothing againſt his will, yet maintains he doth what he would not. He wavers and doubteth, yet obtains.

XXIV. He is often toſſed and ſhaken, yet is as mount *Sion*; he is a ſerpent and a dove; a lamb and a lion; a reed and a cedar. He is ſometimes ſo troubled, that he thinks nothing to be true in religion; yet if he did think ſo, he could not at all be troubled. He thinks ſometimes that God hath no mercy for him, yet reſolves to die in the purſuit of it. He believes like *Abraham* againſt hope, and though he cannot anſwer God's logick, yet with the woman of *Canaan*, he hopes to prevail with the rhetorick of importunity.

XXV. He wreſtles, and yet prevails; and though yielding himſelf unworthy of the leaſt bleſſing he enjoys, yet *Jacob* like, he will not let him go without a new bleſſing. He ſometimes thinks himſelf to have no grace at all, and yet how poor and afflicted ſoever he be beſides, he would not change conditions with the moſt proſperous man under heaven, that is a manifeſt worldling.

XXVI. He thinks ſometimes that the ordinances of God do him no good, yet he would rather part with his life than be deprived of them.

XXVII. He was born dead; yet ſo that it had been murder for any to have taken his life away. After he began to live, he was ever dying.

XXVIII. And though he hath an eternal life begun in him, yet he makes account he hath a death to paſs through.

XXIX. He counts ſelf-murther a heinous ſin, yet is ever buſied in crucifying the fleſh, and in putting to death his earthly members; not doubting, but there will come a time of glory, where he ſhall be eſteemed precious in the ſight of the great God of heaven and earth, appearing with boldneſs at his throne, and aſking any thing he needs; being endued with humility, by acknowledging his great crimes and offences, and tha the deſerveth nothing but ſevere puniſhment.

XXX. He believes his ſoul and body ſhall be as full of glory, as them that have more; and no more full, than theirs that have leſs.

XXXI. He lives inviſible to thoſe that ſee him, and thoſe that know him beſt do but gueſs at him; yet thoſe many times judge more truly of him than he doth of himſelf.

XXXII. The world will ſometimes account him a ſaint, when God accounteth him a hypocrite; and afterwards when the world branded him for an hypocrite, then God owned him for a ſaint.

XXXIII. His death makes not an end of him. His ſoul which was put into his body, is not to be perfected without his body; yet his ſoul is more happy,

happy, when it is ſeparated from his body, than when it was joined unto it: And his body though torn in pieces, burnt to aſhes, ground to powder, turned to rottenneſs, ſhall be no loſer.

XXXIV. His advocate, his ſurety ſhall be his judge; his mortal part ſhall become immortal; and what was ſown in corruption and defilement ſhall be raiſed in incorruption and glory; and a finite creature ſhall poſſeſs an infinite happineſs. Glory be to God.

A PRAYER made and uſed by the Lord Chancellor Bacon.

O Eternal God, and moſt merciful Father in Jeſus Chriſt: Let the words of our mouths, and the meditations of our hearts be now and ever gracious in thy ſight, and acceptable unto thee, O Lord, our God, our ſtrength, and our redeemer.

O Eternal God, and moſt merciful Father in Jeſus Chriſt; in whom thou haſt made a covenant of grace and mercy with all thoſe that come unto thee in him, in his name and mediation, we humbly proſtrate our ſelves before the throne of thy mercies ſeat, acknowledging that by the breach of all thy holy laws and commandments, we are become wild olive-branches, ſtrangers to thy covenant of grace; we have defaced in our ſelves thy ſacred image imprinted in us by creation; we have ſinned againſt heaven and before thee, and are no more worthy to be called thy children. O admit us into the place even of hired ſervants. Lord thou haſt formed us in our mothers wombs, thy providence hath hitherto watched over us, and preſerved us unto this period of time: O ſtay not the courſe of thy mercies and loving-kindneſs towards us: have mercy upon us, O Lord, for thy dear Son Chriſt Jeſus ſake, who is the way, the truth, and the life. In him, O Lord, we appeal from thy juſtice to thy mercy, beſeeching thee in his name, and for his ſake only, thou wilt be graciouſly pleaſed freely to pardon, and forgive us all our ſins and diſobedience, whether in thought, word, or deed, committed againſt thy divine Majeſty; and in his precious blood-ſhedding, death, and perfect obedience, free us from the guilt, the ſtain, the puniſhment and dominion of all our ſins, and clothe us with his perfect righteouſneſs. There is mercy with thee, O Lord, that thou mayſt be feared; yea, thy mercies ſwallow up the greatneſs of our ſins: ſpeak peace to our ſouls and conſciences, make us happy in the free remiſſion of all our ſins, and be reconciled to thy poor ſervants in Jeſus Chriſt, in whom thou art well pleaſed: ſuffer not the works of thine own hands to periſh, thou art not delighted in the death of ſinners, but in their converſion. Turn our hearts, and we ſhall be turned; convert us, and we ſhall be converted; illuminate the eyes of our minds and underſtanding with the bright beams of thy Holy Spirit, that we may daily grow in the ſaving knowledge of the heavenly myſtery of our redemption, wrought by our dear Lord and Saviour Jeſus Chriſt; ſanctify our wills and affection by the ſame Spirit, the moſt ſacred fountain of all grace and goodneſs; reduce them to the obedience of thy moſt holy will in the practice of all piety toward thee, and charity towards all men. Inflame our hearts with thy love, caſt forth of them what diſpleaſeth thee, all infidelity, hardneſs of heart, prophaneneſs, hypocriſy, contempt of thy holy word and ordinances, all uncleanneſs, and whatſoever advanceth it ſelf in oppoſition to

thy holy will. And grant that henceforth, through thy grace we may be enabled to lead a godly, holy, ſober, and chriſtian life in true ſincerity and uprightneſs of heart before thee. To this end, plant thy holy fear in our hearts, grant that it may never depart from before our eyes, but continually guide our feet in the paths of thy righteouſneſs, and in the ways of thy commandments: increaſe our weak faith, grant it may daily bring forth the true fruits of unfeigned repentance, that by the power of the death of our Lord and Saviour Jeſus Chriſt, we may daily die unto ſin, and by the power of his reſurrection we may be quickened, and raiſed up to newneſs of life, may be truly born anew, and may be effectually made partakers of the firſt reſurrection, that then the ſecond death may never have dominion over us. Teach us, O Lord, ſo to number our days, that we may apply our hearts unto wiſdom; make us ever mindful of our laſt end, and continually to exerciſe the knowledge of grace in our hearts, that in the ſaid divorce of ſoul and body, we may be tranſlated here to that kingdom of glory prepared for all thoſe that love thee, and ſhall truſt in thee; even then and ever, O Lord, let thy holy angels pitch their tents round about us, to guard and defend us from all the malice of Satan, and from all perils both of ſoul and body. Pardon all our unthankfulneſs, make us daily more and more thankful for all thy mercies and benefits daily poured down upon us. Let theſe our humble prayers aſcend to the throne of grace, and be granted not only for theſe mercies, but for whatſoever elſe thy wiſdom knows needful for us; and for all thoſe that are in need, miſery, and diſtreſs, whom, Lord, thou haſt afflicted either in ſoul or body; grant them patience and perſeverance in the end, and to the end: And that, O Lord, not for any merits of ours, but only for the merits of thy Son, and our alone Saviour Chriſt Jeſus; to whom with thee, and the Holy Spirit, be aſcribed all glory, &c. *Amen.*

LETTERS.

LETTERS.

I. From an original in the Earl of OXFORD's library, never before printed. *

[N. B. *Thoſe Letters mark'd with a* *, *were not in the laſt Edition.*]

It may pleaſe your good Lordſhip,

I AM ſorry the joint maſque from the four inns of court faileth; wherein I conceive there is no other ground of that event but impoſſibility. Nevertheleſs, becauſe it falleth out that at this time *Grays-Inn* is well furniſhed of gallant young gentlemen, your Lordſhip may be pleaſed to know, that rather than this occaſion ſhall paſs without ſome demonſtration of affection from the inns of court, there are a dozen gentlemen of *Grays-Inn*, that out of the honour which they bear to your Lordſhip and my Lord Chamberlain, to whom at their laſt maſque they were ſo much bounden, will be ready to furniſh a maſque, wiſhing it were in their power to perform it according to their mind. And ſo for the preſent I humbly take my leave, reſting

Your Lordſhip's very humble and much bounden,

FR. BACON.

II. A LETTER of ceremony to QUEEN ELIZABETH, upon the ſending of a New-year's gift.

It may pleaſe your ſacred Majeſty,

ACCORDING to the ceremony of the time, I would not forget, in all humbleneſs, to preſent your Majeſty with a ſmall new-year's gift: nothing to my mind. And therefore to ſupply it, I can but pray to God to give your Majeſty his new-year's gift; that is, a new year that ſhall be as no year to your body; and as a year with two harveſts to your coffers: and every other way proſperous and gladſome. And ſo I remain,

Your Majeſty's loyal and obedient ſubject.

III. A LETTER of ceremony to QUEEN ELIZABETH, upon the ſending of a New-year's gift.

Moſt excellent ſovereign Miſtreſs,

THE only new-year's gift which I can give your Majeſty, is that which God hath given to me; which is, a mind, in all humbleneſs, to wait upon

upon your commandments and buſineſs: wherein I would to God, that I were hooded, that I ſaw leſs; or that I could perform more: for now I am like a hawk that bates, when I ſee occaſion of ſervice, but cannot fly becauſe I am tied to another's fiſt. But mean while, I continue my preſumption of making to your Majeſty my poor oblation of a garment, as unworthy the wearing as his ſervice that ſends it: but the approach to your excellent perſon may give worth to both; which is all the happineſs I aſpire unto.

IV. To the QUEEN.

It may pleaſe your ſacred Majeſty,

I WOULD not fail to give your Majeſty my moſt humble and due thanks, for your royal choice of ſuch commiſſioners in the great *Star-chamber* cauſe; being perſons beſides their honour of ſuch ſcience and integrity: by whoſe report I doubt not but your Majeſty will find that, which you have been heretofore informed (both by my lord keeper, and by ſome much meaner perſon) touching the nature of that cauſe, to be true. This preparatory hearing doth already aſſail me, with new and enlarged offers of compoſition; which if I had born a mind to have hearkened unto, this matter had been quenched long ago, without any benefit to your Majeſty. But your Majeſty's benefit is to me in greater regard than mine own particular: truſting to your Majeſty's gracious diſpoſition and royal word, that your Majeſty will include me, in any extraordinary courſe of your ſovereign pleaſure, which your Majeſty ſhall like to take in this cauſe. The other man, I ſpoke to your Majeſty of, may, within theſe two terms, be in the ſame ſtraits, between your Majeſty's juſtice and mercy, that this man now is, if your Majeſty be ſo pleaſed. So moſt humbly craving pardon, for my preſuming to ſeek acceſs for theſe few lines, I recommend your Majeſty to the moſt precious cuſtody, and beſt preſervation of the divine Majeſty.

Your Majeſty's moſt humble, and entirely

Probably wrote 1600. *obedient ſervant and ſubject.*

V. To the QUEEN.

It may pleaſe your excellent Majeſty,

I PRESUME, according to the ceremony and good manner of the time, and my accuſtomed duty, in all humbleneſs to preſent your Majeſty with a ſimple gift; almoſt as far from anſwering my mind, as ſorting with your greatneſs; and therewith wiſh, that we may continue to reckon on, and ever, your Majeſty's happy years of reign: and they that reckon upon any other hopes, I would they might reckon ſhort and to their coſt. And ſo craving pardon moſt humbly, I commend your Majeſty to the preſervation of the divine goodneſs.

VI. To the QUEEN.

It may pleaſe your excellent Majeſty,

I MOST humbly entreat your Majeſty, not to impute my abſence to any weakneſs of mind or unworthineſs. But I aſſure your Majeſty, I do find envy beating ſo ſtrongly upon me, ſtanding as I do, (if this be to ſtand) as it were not ſtrength of mind, but ſtupidity, if I ſhould not decline the occaſions; except I could do your Majeſty more ſervice than I can any ways diſcern that I am able to do. My courſe towards your Majeſty (God is my witneſs) hath been pure and unleavened: and never poor gentleman (as I am perſuaded) had a deeper and truer deſire and care of your glory, your ſafety, your repoſe of mind, your ſervice: wherein, if I have exceeded my outward vocation, I moſt humbly crave your Majeſty's pardon for my preſumption. On the other ſide, if I have come ſhort of my inward vocation, I moſt humbly crave God's pardon for quenching the ſpirit. But in this mind I find ſuch ſolitude, and want of comfort, which I judge to be, becauſe I take duty too exactly, and not according to the dregs of this age; wherein the old anthem might never be more truly ſung; *totus mundus in maligno poſitus eſt.* My life hath been threatened, and my name libelled, which I count an honour. But theſe are the practices of thoſe whoſe deſpairs are dangerous, but yet not ſo dangerous as their hopes; or elſe the devices of ſome, that would put out all your Majeſty's lights, and fall on reckoning, how many years you have reigned; which I beſeech our bleſſed Saviour may be doubled: and that I may never live to ſee any eclipſe of your glory, interruption of ſafety, or indiſpoſition of your perſon; which I commend to the divine Majeſty, who keep you and fortify you.

This ſeems to refer to the E. of Eſſex, 1600.

VII. To my Lord Treaſurer BURGHLEY, 1591.

My Lord,

WITH as much confidence as mine own honeſt and faithful devotion unto your ſervice, and your honourable correſpondence unto me and my poor eſtate can breed in a man, do I commend my ſelf unto your lordſhip. I wax now ſomewhat ancient; * one and thirty years is a great deal of ſand in the hour-glaſs. My health, I thank God, I find confirmed; and I do not fear that action ſhall impair it; becauſe I account my ordinary courſe of ſtudy and meditation to be more painful than moſt parts of action are. I ever bore a mind (in ſome middle place that I could diſcharge) to ſerve her Majeſty; not as a man born under *Sol*, that loveth honour; nor under *Jupiter*, that loveth buſineſs; (for the contemplative planet carrieth me away wholly:) but as a man born under an excellent ſovereign, that deſerveth the dedication of all mens abilities. Beſides, I do not find in my ſelf ſo much ſelf-love, but that the greater part of my thoughts are to deſerve well (if I were able) of my friends, and namely of your lordſhip; who being the *Atlas* of this commonwealth, the honour of my houſe, and the ſecond founder of my poor eſtate, I am tied by all duties, both of a good patriot, and of an unworthy kinſman, and of an obliged ſervant, to employ whatſoever I am to do you ſervice.

* Therefore wrote 1591.

vice. Again, the meanneſs of my eſtate doth ſomewhat move me: for though I cannot accuſe my ſelf, that I am either prodigal or ſlothful, yet my health is not to ſpend, nor my courſe to get. Laſtly, I confeſs that I have as vaſt contemplative ends, as I have moderate civil ends: for I have taken all knowledge to be my province; and if I could purge it of two ſorts of rovers, whereof the one with frivolous diſputations, confutations and verboſities; the other with blind experiments and auricular traditions and impoſtures, hath committed ſo many ſpoils; I hope I ſhould bring in induſtrious obſervations, grounded concluſions, and profitable inventions and diſcoveries, the beſt ſtate of that province. This, whether it be curioſity, or vain-glory, or nature, or (if one take it favourably) *Philanthropia*, is ſo fixed in my mind, as it cannot be removed. And I do eaſily ſee, that place of any reaſonable countenance doth bring commandment of more wits than of a man's own; which is the thing I greatly affect. And for your lordſhip, perhaps you ſhall not find more ſtrength and leſs encounter in any other. And if your lordſhip ſhall find now or at any time, that I do ſeek or affect any place, whereunto any that is nearer unto your lordſhip ſhall be concurrent, ſay then that I am a moſt diſhoneſt man. And if your lordſhip will not carry me on, I will not do as *Anaxagoras* did, who reduced himſelf with contemplation, unto voluntary poverty: But this I will do, I will ſell the inheritance that I have, and purchaſe ſome leaſe of quick revenue, or ſome office of gain, that ſhall be executed by deputy, and ſo give over all care of ſervice, and become ſome ſorry book-maker, or a true pioneer in that mine of truth, which (he ſaid) lay ſo deep. This which I have writ unto your lordſhip, is rather thoughts than words, being ſet down without all art, diſguiſing, or reſervation: wherein I have done honour both to your lordſhip's wiſdom, in judging, that that will be beſt believed of your lordſhip which is trueſt; and to your lordſhip's good nature, in retaining nothing from you. And even ſo, I wiſh your lordſhip all happineſs, and to my ſelf means and occaſion to be added to my faithful deſire to do you ſervice. From my lodging at *Grays-Inn*.

VIII. To the Lord Treaſurer BURGHLEY.

My ſingular good Lord,

YOUR lordſhip's comfortable relation of her Majeſty's gracious opinion and meaning towards me, though at that time your leiſure gave me not leave to ſhew how I was affected therewith; yet, upon every repreſentation thereof it entereth and ſtriketh more deeply into me, as both by nature and duty, preſſeth me to return ſome ſpeech of thankfulneſs. It muſt be an exceeding comfort and encouragement to me, ſetting forth and putring my ſelf in way towards her Majeſty's ſervice, to encounter with an example ſo private and domeſtical, of her Majeſty's gracious goodneſs and benignity; being made good and verified in my father, ſo far forth, as it extendeth to his poſterity; accepting them as commended by his ſervice, during the nonage (as I may term it) of their own deſerts. I, for my part, am very well content, that I take leaſt part, either of his abilities of mind, or of his worldly advancement; both which he held and received, the one of the gift of God immediately, the other of her Majeſty's gift: yet, in the loyal and earneſt affection which he bare to her Majeſty's ſervice, I truſt my portion ſhall not be with the leaſt,

nor

nor in proportion with the youngeſt birth. For methinks his precedent ſhould be a ſilent charge upon his bleſſing unto us all, in our degrees, to follow him afar off, and to dedicate unto her Majeſty's ſervice, both the uſe and ſpending of our lives: True it is, that I muſt needs acknowledge my ſelf prepared and furniſhed thereunto, with nothing but with a multitude of lacks and imperfections; but calling to mind how diverſely, and in what particular providence God hath declared himſelf to tender the ſtate of her Majeſty's affairs, I conceive and gather hope, that thoſe whom he hath in a manner preſs'd for her Majeſty's ſervice, by working and imprinting in them a ſingle and zealous mind to beſtow their duties therein; he will ſee them accordingly appointed of ſufficiency convenient for the rank and ſtanding where they ſhall be employed: ſo as under this her Majeſty's bleſſing, I truſt to receive a larger allowance of God's graces. And as I may hope for this, ſo I can aſſure and promiſe for my endeavour, that it ſhall not be in fault; but what diligence can entitle me unto, that I doubt not to recover. And now ſeeing it hath pleaſed her Majeſty to take knowledge of this my mind, and to vouchſafe to appropriate me unto her ſervice, preventing any deſert of mine, with her princely liberality; firſt, I humbly do beſeech your lordſhip, to preſent to her Majeſty my more than humble thanks for the ſame: and withal, having regard to mine own unworthineſs to receive ſuch favour, and to the ſmall poſſibility in me to ſatisfy and anſwer what her Majeſty conceiveth, I am moved to become a moſt humble ſuitor to her Majeſty, that this benefit alſo may be affixed unto the other; which is, that if there appear in me no ſuch towardneſs of ſervice, as it may be her Majeſty doth benignly value and aſſeſs me at, by reaſon of my ſundry wants, and the diſadvantage of my nature, being unapt to lay forth the ſimple ſtore of thoſe inferior gifts, which God hath allotted unto me, moſt to view; yet that it would pleaſe her excellent Majeſty, not to account my thankfulneſs the leſs, for that my diſability is great to ſhew it; but to ſuſtain me in her Majeſty's gracious opinion, whereupon I only reſt, and not upon any expectation of deſert to proceed from my ſelf towards the contentment thereof. But if it ſhall pleaſe God to ſend forth an occaſion, whereby my faithful affection may be tried, I truſt it ſhall ſave me labour for ever making more proteſtation of it hereafter. In the mean time, howſoever it be not made known to her Majeſty, yet God knoweth it through the daily ſolicitations wherewith I addreſs my ſelf unto him in unfeigned prayer, for the multiplying of her Majeſty's proſperities. To your lordſhip alſo, whoſe recommendation I know right well, hath been material to advance her Majeſty's good opinion of me, I can be but a bounden ſervant. So much may I ſafely premiſe, and purpoſe to be, ſeeing publick and private bonds vary not, but that my ſervice to her Majeſty and your Lordſhip, draw in a line. I wiſh therefore to ſhew it with as good proof, as I can ſay it in good faith, *&c.*

Your Lordſhip's, &c.

IX. To the Lord Treaſurer BURGHLEY.

It may pleaſe your good Lordſhip,

I AM to give you humble thanks for your favourable opinion, which by Mr. Secretary's report, I find you conceive of me, for the obtaining of a good place, which ſome of my honourable friends have wiſhed unto me, *nec*

opinanti. I will uſe no reaſon to perſuade your lordſhip's mediation but this, that your lordſhip, and my other friends, ſhall in this beg my life of the queen; for I ſee well the bar will be my bier, as I muſt and will uſe it, rather than my poor eſtate or reputation ſhall decay. But I ſtand indifferent, whether God call me or her Majeſty. Had I that in poſſeſſion, which by your lordſhip's only means, againſt the greateſt oppoſition her Majeſty granted me, I would never trouble her Majeſty, but ſerve her ſtill voluntarily without pay. Neither do I, in this, more than obey my friends conceits, as one that would not be wholly wanting to my ſelf. Your Lordſhip's good opinion doth ſomewhat confirm me, as that I take comfort in above all others; aſſuring your lordſhip, that I never thought ſo well of my ſelf for any one thing, as that I have found a fitneſs to my thinking in my ſelf, to obſerve and revere your virtues: for the continuance whereof, in the prolonging of your days, I will ſtill be your beadſman; and accordingly, at this time, commend your lordſhip to the divine protection.

X. To the Lord Treaſurer BURGHLEY.

Moſt honourable, and my very good Lord,

I KNOW I may commit an error in writing this letter, both in a time of great and weighty buſineſs; as alſo when my ſelf am not induced thereto, by any new particular occaſion; and therefore your lordſhip may impute to me either levity or ignorance, what appertaineth to good reſpects and forwardneſs of dealing; eſpecially to an honourable perſon, in whom there is ſuch concurrence of *magnitudo honoris & oneris*, as it is hard to ſay whether is the greater. But I anſwer my ſelf firſt, that I have ever noted it as a part of your lordſhip's excellent wiſdom, *parvis componere magna*; that you do not exclude inferior matters of acceſs, amongſt the care of great. And for my ſelf, I thought it would better manifeſt what I deſire to expreſs, if I did write out of a deep and ſettled conſideration of my own duty, rather than upon the ſpur of a particular occaſion: and therefore, (my ſingular good Lord) *ex abundantia cordis*, I muſt acknowledge how greatly, and diverſly your lordſhip hath vouchſafed to tie me unto you by many your benefits. The reverſion of the office which your lordſhip only procured unto me, and carried through great and vehement oppoſition, though it yet bear no fruit, yet it is one of the faireſt flowers of my poor eſtate: your lordſhip's conſtant and ſerious endeavours to have me ſollicitor; your late honourable wiſhes for the place of the wards; together with your lordſhip's attempt to give me way by the remove of Mr. Sollicitor; they be matters of ſingular obligation; beſides many other favours, as well by your lordſhip's grants from your ſelf, as by your commendation to others, which I have had for my help; and may juſtly perſuade my ſelf, out of the few denials I have received, that fewer might have been; if mine own induſtry and good hap had been anſwerable to your lordſhip's goodneſs. But on the other ſide, I moſt humbly pray your lordſhip's pardon if I ſpeak it; the time is yet to come that your lordſhip did ever uſe, or command or employ me, in my profeſſion, in any ſervices or occaſions of your lordſhip's own, or ſuch as are near unto your lordſhip; which hath made me fear ſometimes, that your lordſhip doth more honourably affect me, than throughly diſcern of my moſt humble and dutiful affection to your lordſhip again: Which if it were not in me, I knew not whether I were unna-

tural, unthankful, or unwiſe. This cauſeth me moſt humbly to pray your lordſhip (and I know mine own caſe too well, to ſpeak it as weening I can do your lordſhip ſervice, but as willing to do it, as) to believe, that your lordſhip is upon juſt title a principal owner and proprietor of that, I cannot call, talent, but mite, that God hath given me; which I ever do, and ſhall devote to your ſervice. And in like humble manner, I pray your lordſhip to pardon mine errors, and not to impute unto me the errors of any other; (which I know alſo themſelves have by this time left and forethought:) but to conceive of me to be a man that daily profiteth in duty. It is true I do in part comfort my ſelf, ſuppoſing that it is my weakneſs and inſufficiency that moveth your lordſhip, who hath ſo general a command to uſe others more able. But let it be as it is, for duty only and homage I will boldly undertake, that nature and true thankfulneſs ſhall never give place to a politick dependence. Laſtly, I moſt humbly deſire your lordſhip to continue unto me the good favour, and countenance, and encouragement, in the courſe of my poor travails, whereof I have had ſome taſte and experience; for the which I yield your lordſhip my very humble good thanks. And ſo again, craving your honour's pardon for ſo long a letter, carrying ſo empty an offer of ſo unpuiſſant a ſervice, but yet a true and unfeigned ſignification of an honeſt and vowed duty; I ceaſe, commending your lordſhip to the preſervation of the Divine Majeſty.

XI. A LETTER to the Lord Treaſurer BURGHLEY, in excuſe of his Speech in Parliament, againſt the Triple Subſidy.

It may pleaſe your Lordſhip,

I WAS ſorry to find, by your lordſhip's ſpeech yeſterday, that my laſt ſpeech in parliament, delivered in diſcharge of my conſcience, and duty to God, her Majeſty, and my country, was offenſive. If it were miſreported, I would be glad to attend your lordſhip to diſavow any thing I ſaid not; if it were miſconſtrued, I would be glad to expound my ſelf, to exclude any ſenſe I meant not. If my heart be misjudged by imputation of popularity or oppoſition, by any envious or officious informer, I have great wrong; and the greater, becauſe the manner of my ſpeech did moſt evidently ſhew, that I ſpake ſimply, and only to ſatisfy my conſcience, and not with any advantage or policy to ſway the cauſe: and my terms carried all ſignification of duty and zeal towards her Majeſty and her ſervice. It is true, that from the beginning, whatſoever was above a double ſubſidy, I did wiſh might (for precedent ſake) appear to be extraordinary; and (for diſcontent's ſake) might not have been levied upon the poorer ſort: though otherwiſe, I wiſhed it as riſing as I think this will prove, and more. This was my mind, I confeſs it: And therefore I moſt humbly pray your good lordſhip, firſt, to continue me in your own good opinion; and then to perform the part of an honourable friend towards your poor ſervant and alliance; in drawing her Majeſty to accept of the ſincerity and ſimplicity of my heart; and to bear with the reſt, and reſtore me to her Majeſty's good favour, which is to me dearer than my life. And ſo, *&c.*

Your Lordſhip's moſt humbly in all duty.

XII.

XII. To the right honourable his very good lord, the Lord Keeper of the Great Seal, &c.

My very good Lord,

I WAS wiſhed to be here ready in expectation of ſome good effect; and therefore I commend my fortune to your lordſhip's kind and honourable furtherance. My affection inclineth me to be much [your] lordſhip's, and my courſe and way in all reaſon and policy for my ſelf, leadeth me to the ſame dependance: Hereunto if there ſhall be joined your lordſhip's obligation in dealing ſtrongly for me as you have begun, no man can be more yours. A timorous man is every body's and a covetous man is his own. But if your lordſhip conſider my nature, my courſe, my friends, my opinion with her Majeſty, (if this eclipſe of her favour were paſt) I hope you will think, I am no unlikely piece of wood to ſhape you a true ſervant of. My preſent thankfulneſs ſhall be as much as I have ſaid. I humbly take my leave.

Your Lordſhip's true humble ſervant,

FR. BACON.

From *Greenwich* this 5th of *April* 1594.

XIII. To the right honourable my very good lord the Lord Keeper.

My Lord,

I HAVE ſince I ſpake with your lordſhip pleaded to the queen againſt herſelf for the injury ſhe doth Mr. *Bacon* in delaying him ſo long, and the unkindneſs ſhe doth me in granting no better expedition in a ſuit which I have followed ſo long, and ſo affectionately. And though I find that ſhe makes ſome difficulty to have the more thanks, yet I do aſſure my ſelf ſhe is reſolved to make him. I do write this not to ſollicit your lordſhip to ſtand firm in aſſiſting me, becauſe I know, you hold your ſelf already tied by your affection to Mr. *Bacon*, and by your promiſe to me; but to acquaint your lordſhip with my reſolution to ſet up my reſt, and employ my uttermoſt ſtrength to get him placed before the term: So as I beſeech your lordſhip think of no temporizing courſe, for I ſhall think the queen deals unkindly with me, if ſhe do not both give him the place, and give it with favour and ſome extraordinary advantage. I wiſh your lordſhip all honour and happineſs; and reſt,

Your Lordſhip's very aſſured,

ESSEX.

Endorſed, My lord of *Eſſex*, for Mr. *Fran. Bacon*, to be ſollicitor.

XIV. To the right honourable his very good lord, the Lord Keeper of the Great Seal.

My very good Lord,

SIR *Thomas Egerton* failing of your lordſhip, being newly gone, ſent his letter to me to ſee conveyed unto you, which I ſend incloſed; deſiring your lordſhip according to your kind affection, to make the beſt uſe thereof for my furtherance. And I pray your lordſhip to call to remembrance my

lord

lord treaſurer's kind courſe, who affirmed directly all the reſt to be unfit. And becauſe, *vis unita fortior*, I pray your lordſhip to take a time with the Queen, when my lord treaſurer is preſent. Thus in hope to-morrow will bring forth ſome good effect, I reſt,

Your Lordſhip's in all humble duty and ſervice,

FR. BACON.

XV. To the right honourable, &c. the Lord Keeper, &c.

My very good Lord,

BECAUSE I underſtand your lordſhip remaineth at court till this day, and that my lord of *Eſſex* writeth to me, that his lordſhip cometh to *London*, I thought good to remember your good lordſhip, and to requeſt you, as I touched in my laſt, that if my lord treaſurer be abſent, your lordſhip would forbear to fall into my buſineſs with her Majeſty, leſt it might receive ſome foil before the time, when it ſhould be reſolutely dealt in. And ſo commending my ſelf to your good favour, I moſt humbly take my leave.

From *Gray's-Inn* this 8th of *April*, 1594.

Your Lordſhip's in all humble duty and ſervice,

FR. BACON.

XVI. To the right honourable the Lord Keeper, &c.

It may pleaſe your good Lordſhip,

I UNDERSTAND of ſome buſineſs like enough to detain the Queen to-morrow, which maketh me earneſtly to pray your good lordſhip, as one that I have found to take my fortune to heart, to take ſome time to remember her Majeſty of a ſollicitor this preſent day.

OUR tower employment ſtayeth, and hath done theſe three days, becauſe one of the principal offenders being brought to confeſs, and the other perſiſting in denial, her Majeſty in her wiſdom thought beſt ſome time were given to him that is obſtinate, to bethink himſelf; which indeed is ſingular good in ſuch caſes. Thus deſiring your lordſhip's pardon, in haſte I commend my fortune and duty to yonr favour.

From *Gray's-Inn* this 13th of *Auguſt*, 1594.

Your Lordſhip's moſt humbly to receive your commandments,

FR. BACON.

XVII. To the right honourable the Lord Keeper, &c.

It may pleaſe your good Lordſhip,

AS your lordſhip hath at divers times helped me to paſs over contrary times, ſo I humbly pray you not to omit this favourable time. I cannot bear my ſelf as I ſhould, till I be ſettled. And thus deſiring pardon, I leave your lordſhip to God's preſervation.

From *Gray's-Inn* this 25th of *Auguſt*, 1594.

Your Lordſhip's moſt humbly at commandment,

FR. BACON.

XVIII. To the right honourable his very good lord, the Lord Keeper, &c.

It may pleaſe your good Lordſhip,

I WAS minded according to the place of employment, though not of office, wherein I ſerve, for my better direction and the advancement of the ſervice, to have acquainted your lordſhip now before the term, with ſuch her Majeſty's cauſes as are in my hands. Which courſe intended out of duty, I do now find by that I hear from my lord of *Eſſex*, your lordſhip of your favour is willing to uſe for my good, upon that ſatisfaction you may find in my travels. And I now ſend to your lordſhip, together with my humble thanks, to underſtand of your lordſhip's being at [leiſure] what part of to-morrow, to the end I may attend your lordſhip, which this afternoon I cannot, in regard of ſome conference I have appointed with Mr. Attorney General. And ſo I commend your honourable lordſhip to God's good preſervation.

Your good Lordſhip's humbly at your hon[ourable] commandments,

From *Gray's-Inn* the 25th of *September, Friday.* FR. BACON.

XIX. To the right honourable the Lord Keeper, &c.

It may pleaſe your good Lordſhip,

I RECEIVED, at my lord of *Eſſex* laſt going from court, a meſſage of good aſſurance, which his lordſhip ſent to my brother and to my ſelf; which was this: That her Majeſty had ſtedfaſtly promiſed him to diſpatch my matter to-morrow. And ſomewhat her Majeſty ſaid to my ſelf, when I attended her upon ſome ſervice ſince; which I liked well, though it was with ſome doubtfulneſs, as they ſay her Majeſty uſeth till the laſt hour. This I thought good to ſignify to your good lordſhip, both that your lordſhip may perceive how effectual and operative your lordſhip's laſt dealing with her Majeſty was; and alſo that now the wheel is going, your lordſhip would ſet it forward, the rather in reſpect of the neceſſity to go preſently in hand with theſe criminal cauſes, if the commiſſion ſhall hold according to the adjournment. And if her Majeſty ſhould not be pleaſed preſently to give order for a patent, yet if your lordſhip may by her warrant give me warning to prepare my ſelf, it will be ſome hold and ſatisfaction. So thinking long to have the ſtrength of place, to do your lordſhip acceptable ſervice, I leave your good lordſhip to God's good preſervation.

Your Lordſhip's moſt humbly at your hon[ourable] commandments,

From *Gray's-Inn* this 28th of *September*, 1594. FR. BACON.

XX. To

XX. To the right honourable the Lord Keeper, &c.

It may pleaſe your Lordſhip,

I THOUGHT good to ſtep aſide for nine days, which is the durance of a wonder, and not for any diſlike in the world; for I think her Majeſty hath done me as great a favour in making an end of this matter, as if ſhe had enlarged me from ſome reſtraint. And I humbly pray your lordſhip, if it ſo pleaſe you, to deliver to her Majeſty from me, that I would have been glad to have done her Majeſty ſervice now in the beſt of my years, and the ſame mind remains in me ſtill; and that it may be, when her Majeſty hath tried others, ſhe will think of him, that ſhe hath caſt aſide. For I will take it upon that which her Majeſty hath often ſaid, that ſhe doth reſerve me, and not reject me. And ſo I leave your good lordſhip to God's good preſervation.

Your Lordſhip's much bounden,

From *Twicknam-Park* this 20th of *May*, 1595.
Endorſed: Mr. *Fr. Bacon* his contentation to leave the ſollicitorſhip.

FR. BACON.

XXI. A LETTER to the Lord Treaſurer BURGHLEY, recommending his firſt ſuit, touching the ſollicitor's place.

My Lord, after the remembrance of my moſt humble duty,

THOUGH I know, by late experience, how mindful your lordſhip vouchſafeth to be of me and my poor fortunes, ſince it pleaſed your lordſhip, during your indiſpoſition, when her Majeſty came to viſit your lordſhip, to make mention of me for my employment and preferment; yet being now in the country, I do preſume that your lordſhip, who of your ſelf had ſo honourable care of the matter, will not think it a trouble to be ſolicited therein. My hope is, that whereas your lordſhip told me her Majeſty was ſomewhat gravelled upon the offence ſhe took at my ſpeech in parliament; your lordſhip's favourable and good word (who hath aſſured me, that for your own part you conſtrued, that I ſpake to the beſt) will be as a good tide to remove her from that ſhelf. And it is not unknown to your good lordſhip, that I was the firſt of the ordinary ſort of the lower houſe of parliament that ſpake for the ſubſidy; and that which I after ſpake in difference, was but in circumſtances of time and manner, which methinks ſhould be no greater matter, ſince there is variety allowed in counſel, as a diſcord in muſick to make it more perfect. But I may juſtly doubt, not ſo much her Majeſty's impreſſion upon this particular, as her conceit otherwiſe of my inſufficiency; which though I acknowledge to be great, yet it will be the leſs, becauſe I purpoſe not to divide my ſelf between her Majeſty and the cauſes of other men (as others have done) but to attend her buſineſs only; hoping that a whole man meanly able, may do as well as half a man better able. And if her Majeſty think that ſhe ſhall make an adventure in uſing one that is rather a man of ſtudy, than of practice and experience; ſurely I may remember to have heard that my father, (an example, I confeſs, rather ready than like) was made ſollicitor of the augmentation (a court of much buſineſs) when he had never

practiſed, and was but twenty-ſeven years old; and Mr. *Brograve* was now, in my time, called to be attorney of the duchy, when he had practiſed little or nothing; and yet diſcharged his place with great ſufficiency. But theſe things and the like are as her Majeſty ſhall be made capable of them; wherein, knowing what authority your lordſhip's commendation hath with her Majeſty, I conclude with my ſelf, that the ſubſtance of ſtrength which I may receive, will be from your lordſhip. It is true, my life hath been ſo private, as I have had no means to do your lordſhip ſervice; but yet, as your lordſhip knoweth, I have made offer of ſuch as I could yield: for as God hath given me a mind to love the publick; ſo incidently, I have ever had your lordſhip in ſingular admiration; whoſe happy ability her Majeſty hath ſo long uſed to her great honour and yours. Beſides, that amendment of ſtate or countenance, which I have received, hath been from your lordſhip. And therefore if your lordſhip ſhall ſtand a good friend to your poor ally, you ſhall but *tueri opus proprium*, which you have begun. And your lordſhip ſhall beſtow your benefit upon one that hath more ſenſe of obligation than of ſelf-love. Thus humbly deſiring pardon, of ſo long a letter, I wiſh your lordſhip all happineſs. This 7th of *June*, 1595.

Your Lordſhip's in all humbleneſs to be commanded.

Cab. p. 18.

XXII. To the right honourable the Lord Keeper, &c.

It may pleaſe your good Lordſhip,

NOT able to attend your lordſhip my ſelf, before your going to the court, by reaſon of an ague, which offered me a fit on *Wedneſday* morning, but ſince by abſtinence, I thank God, I have ſtarved it, ſo as now he had turned his back, I am chaſing him away with a little phyſick; I thought good to write theſe few words to your lordſhip, partly to ſignify my excuſe, if need be, that I aſſiſted not Mr. Attorney on *Thurſday* laſt in the ſtar-chamber, at which time it is ſome comfort to me, that I hear by relation ſomewhat was generally taken hold of by the court, which I formerly had opened and moved; and partly to expreſs a little my conceit, touching the news, which your lordſhip laſt told me from the Queen, concerning a condition in law knit to an intereſt, which your lordſhip remembreth, and is ſuppoſed to be broken by *miſeyance*. Wherein ſurely my mind, as far as it appertaineth to me, is this, that as I never liked not ſo much as the coming in upon a leaſe by way of forfeiture, ſo I am ſo much enemy to my ſelf, as I take no contentment in any ſuch hope of advantage. For as your lordſhip can give me beſt teſtimony, that I never in my life propounded any ſuch like motion, though I have been incited thereto; ſo the world will hardly believe, but that it is underhand quickened and nouriſhed from me. And truly, my lord, I would not be thought to ſupplant any man for great gain, and I humbly pray your lordſhip to continue your commendation and countenance to me in the courſe of the Queen's ſervice, that I am entered into: which, when it ſhall pleaſe God to move the Queen to * profit, I hope I ſhall give cauſe for your lordſhip to obtain as many thanks, as you have endured chidings. And ſo I commend your good lordſhip to God's good preſervation.

* *f.* perfect.

Your Lordſhip's moſt humbly at your hon[*ourable*] *commandment,*

From *Gray's-Inn* the 11th of *June*, 1595.

FR. BACON.

XXIII. To

XXIII. To the right honourable the Lord Keeper, &c.

It may pleaſe your Lordſhip,

THERE hath nothing happened to me in the courſe of my buſineſs more contrary to my expectation, than your lordſhip's failing me, and croſſing me now in the concluſion, when friends are beſt tried. But now I deſire no more favour of your lordſhip, than I would do if I were a ſuitor in the chancery; which is this only, that you would do me right. And I, for my part, though I have much to alledge, yet nevertheleſs, if I ſee her Majeſty ſettle her choice upon an able man, ſuch a one as Mr. Serjeant *Fleming*, I will make no means to alter it. On the other ſide, if I perceive any inſufficient obſcure * idole man offered to her Majeſty, then I think my ſelf double bound to uſe the beſt means I can for my ſelf, which I humbly pray your lordſhip I may do with your favour, and that you will not diſable me farther than is cauſe. And ſo I commend your lordſhip to God's preſervation. * Ita MSS.

From *Gray's Inn* the 28th of *July*, 1595. *That beareth your Lordſhip all humble reſpect,*

Endorſed: Mr. *Bacon, wronging me.* In Lord Keeper's hand.

FR. BACON.

XXIV. To the right honourable the Lord Keeper, &c.

It may pleaſe your Lordſhip,

I THOUGHT it became me to write to your lordſhip, upon that which I have underſtood from my lord of *Eſſex*, who vouchſafed, as I perceive, to deal with your lordſhip of himſelf to join with him in the concluding of my buſineſs, and findeth your lordſhip hath conceived offence, as well upon my manner, when I ſaw your lordſhip at *Temple* laſt, as upon a letter, which I did write to your lordſhip ſome time before. Surely, my lord, for my behaviour I am well aſſured, I omitted no point of duty or ceremony towards your lordſhip. But I know too much of the court to beg a countenance in publick place, where I make account, I ſhall not receive it. And for my letter, the principal point of it was, that which I hope God will give me grace to perform, which is, that if any idole may be offered to her Majeſty, (ſince it is mixt with my particular) to inform her Majeſty truly, which I muſt do, as long as I have a tongue to ſpeak, or a pen to write, or a friend to uſe. And farther, I remember not of my letter, except it were that I writ, I hoped your lordſhip would do me no wrong, which hope I do ſtill continue. For if it pleaſe your lordſhip, but to call to mind from whom I am deſcended, and by whom, next to God, her Majeſty, and your own virtue, your lordſhip is aſcended; I know you will have a compunction of mind to do me any wrong. And therefore, good my lord, when your lordſhip favoureth others before me, do not lay the ſeparation of your love and favour upon my ſelf. For I will give no cauſe, neither can I acknowledge any, where none is; but humbly pray your lordſhip to underſtand things as they are. Thus ſorry to write to your lordſhip in an argu-

argument, which is to me unpleaſant, though neceſſary, I commend your lordſhip to God's good preſervation.

From *Twicknam-Park* this 19th of *Auguſt*, 1595. *Your Lordſhip's in all humble reſpect,*

FR. BACON.

XXV. To the right honourable the Lord Keeper, &c.

It may pleaſe your good Lordſhip,

I AM ſorry the opportunity permitteth me not to attend your lordſhip as I minded. But I hope your lordſhip will not be the leſs ſparing in uſing the argument of my being ſtudied and prepared in the Queen's cauſes, for my furtherance, upon belief that I had imparted to your lordſhip my travels, which ſome time next week I mean to do. Neither have I been able to confer with Mr. Attorney, as I deſired, becauſe he was removing from one building to another. And beſides, he alledged his note-book was in the country at —— and ſo we reſpited it to ſome time next week. I think he will rather do me good offices than otherwiſe, except it be for the townſhip, your lordſhip remembreth by the verſe. Thus I commend your honourable lordſhip to God's good preſervation.

Your Lordſhip's moſt humble at your hon[*ourable*] *commandment,*

From *Gray's-Inn* this 25th of *September*, 1595. FR. BACON.

XXVI. To the right honourable my very good Lord, the Lord Keeper of the great ſeal of *England.*

It may pleaſe your good Lordſhip,

MY not acquainting your lordſhip hath proceeded of my not knowing any thing, and of my not knowing of my abſence at *Byſſam* with my lady *Ruſſel*, upon ſome important cauſe of her ſon's. And as I have heard nothing, ſo I look for nothing, though my lord of *Eſſex* ſent me word, he would not write till his lordſhip had good news. But his lordſhip may go on in his affection, which nevertheleſs my ſelf have deſired him to limit. But I aſſure your lordſhip, I can take no farther care for the matter. I am now at *Twicknam-Park*, where I think to ſtay: For her Majeſty placing a ſollicitor, my travel ſhall not need in her cauſes, though whenſoever her Majeſty ſhall like to employ me in any particular, I ſhall be ready to do her willing ſervice. This I write leſt your Lordſhip might think my ſilence came of any conceit towards your lordſhip, which I do aſſure you, I have not. And this needed I not to do, if I thought not ſo: For my courſe will not give me any ordinary occaſion to uſe your favour, whereof nevertheleſs I ſhall ever be glad. So I commend your good lordſhip to God's holy preſervation,

Your Lordſhip's humble, &c.

This 11th of *October*, 1595.

FR. BACON.

XXVII.

XXVII. To the right honourable the Lord Keeper, &c.

It may pleaſe your good Lordſhip,

I CONCEIVE the end already made, which will, I truſt, be to me a beginning of good fortune, or at leaſt of content. Her Majeſty by God's grace ſhall live and reign long, ſhe is not running away, I may truſt her. Or whether ſhe look towards me or no, I remain the ſame, not altered in my intention. If I had been an ambitious man, it would have overthrown me, but minded as I am, *Revertet benedictio mea in ſinum meum.* If I had made any reckoning of any thing to be ſtirred, I would have waited on your lordſhip, and will be at any time ready to wait on you to do you ſervice. So I commend your good lordſhip to God's holy preſervation.

Your Lordſhip's moſt humble at your hon[ourable] commandment,

From *Twicknam-Park* this 14th of *October.*
Endorſed: 14 *October* 95.

FR. BACON.

XXVIII. To the right honourable the Lord Keeper, &c.

My very good Lord,

I RECEIVED a letter from a very friend of mine, requeſting me to move your lordſhip, to put into the commiſſion for the ſubſidy, Mr. *Richard Kempe*, a reader of *Gray's-Inn*, and beſides born to good eſtate, being alſo my friend and familiar acquaintance. And becauſe I conceive the gentleman to be every way ſortable with the ſervice, I am bold to commend him to your lordſhip's good favour. And even ſo with remembrance of my moſt humble duty, I reſt,

Your Lordſhip's affectionate to do you humble ſervice,

Twicknam-Park, July 3. 1593. [5]

FR. BACON.

XXIX. To the right honourable the Lord Keeper, &c.

My Lord,

IN my laſt conference with your lordſhip, I did intreat you both to forbear hurting of Mr. *Fr. Bacon*'s cauſe, and to ſuſpend your judgment of his mind towards your lordſhip, till I had ſpoken with him. I went ſince that time to *Twicknam-park* to confer with him, and had ſignified the effect of our conference by letter ere this, if I had not hoped to have met with your lordſhip, and ſo to have delivered it by ſpeech. I told your lordſhip when I laſt ſaw you, that this manner of his was only a natural freedom, and plainneſs, which he had uſed with me, and in my knowledge with ſome other of his beſt friends, than any want of reverence towards your lordſhip; and therefore I was more curious to look into the moving cauſe of his ſtyle, than

than into the form of it; which now I find to be only a diffidence of your lordſhip's favour and love towards him, and no alienation of that dutiful mind, which he hath born towards your lordſhip. And therefore I am fully perſuaded, that if your lordſhip would pleaſe to ſend for him, there would grow ſo good ſatisfaction, as hereafter he ſhould enjoy your lordſhip's honourable favour, in as great a meaſure as ever, and your lordſhip have the uſe of his ſervice, who, I aſſure your lordſhip, is as ſtrong in his kindneſs, as you find him in his jealouſy. I will uſe no argument to perſuade your lordſhip, that I ſhould be glad of his being reſtored to your lordſhip's wonted favour; ſince your lordſhip both knoweth how much my credit is engaged in his fortune, and may eaſily judge how ſorry I ſhould be, that a gentleman whom I love ſo much, ſhould lack the favour of a perſon, whom I honour ſo much. And thus commending your lordſhip to God's beſt protection, I reſt,

Your Lordſhip's very aſſured,

ESSEX.

Endorſed: 31 *Auguſt*, 95. *My lord of* Eſſex *to have me ſend for Mr.* Bacon, *for he will ſatisfy me.* In Lord Keeper's own hand.

XXX. To the right honourable the Lord Keeper, &c.

My very good Lord,

THE want of aſſiſtance from them which ſhould be Mr. *Fr. Bacon*'s friends, makes [me] the more induſtrious my ſelf, and the more earneſt in ſolliciting mine own friends. Upon me the labour muſt lie of his eſtabliſhment, and upon me the diſgrace will light of his being refuſed. Therefore I pray your lordſhip, now account me not as a ſollicitor only of my friend's cauſe, but as a party intereſted in this: And employ all your lordſhip's favour to me, or ſtrength for me, in procuring a ſhort and ſpeedy end. For though I know, it will never be carried any other way, yet I hold both my friend and my ſelf diſgraced by this protraction. More I would write, but that I know to ſo honourable and kind a friend, this which I have ſaid is enough. And ſo I commend your lordſhip to God's beſt protection, reſting,

[No date] *At your Lordſhip's commandment,*

ESSEX.

XXXI. The Earl of ESSEX's LETTER to the Council at his embarking for *Spain*. *June* 1596.

My very good Lord,

Suppoſed to be wrote by Mr. *Bacon.*

HAVING taken order for all things that belong to our land-forces, and ſtaying only till the ſhips be ready to take in our ſoldiers; I am come aboard, as well to draw other men by my example to leave the ſhore, as to have time and leiſure to aſk account of my ſelf what other duty I have to do, beſides the governing of thoſe troops, and the uſing of them to good purpoſe. In which meditation, as I firſt ſtudy to pleaſe my moſt gracious Sovereign,

as well as to ſerve her; ſo my next care is, to leave your lordſhips well ſatisfied of my paſt carriage, ſince I was nominated to this ſervice; and apt to make favourable conſtruction of what I ſhall do hereafter.

In my paſt carriage I will neither plead merit, nor excuſe imperfections; for whatſoever I ſhall be able to do, I know is leſs than I owe: and beſides my faults, my very faith and zeal (which are the beſt things in me) do make me commit errors. But I would fain approve the matter itſelf of undertaking this ſervice, to have been good, howſoever my former have been erroneous; or at leaſt my intent and ends unblameable, though my judgment were faulty. Your lordſhips know it hath been the wiſdom of all times, rather to attempt and do ſomething in another country, than to attend an enemy, and be in danger much in our own. And if this rule among the ancients was generally held true, it might be better allowed of us in particular caſes, where a ſtate little in territory, not extraordinary rich, and defended only with itſelf, ſhall have to do with another ſtate, that hath many and ample dominions, the treaſure of the *Indies*, and all the mercenaries of Chriſtendom to ſerve it. For we have, as the *Athenians* had with the ancient uſurping *Philip*, *proelium facile*, *bellum difficile*. Therefore it is our diſadvantage to draw the war into length. And if any man in this kingdom ſhould be allowed to perſuade to prevention, he might be one that ſaw the *Spaniard* at home, apprehend an invaſion with greater terror than he makes it abroad; and that was a witneſs how an handful of men, neither armed, victualled, nor ordered as they ſhould be, landed, marched, and had done what they liſted, if either the ſhips had come up, or they had had any proviſions to make a hole in a wall, or to break open a gate. But though the counſel be good for ſome ſtates, and for ours at ſome times, yet the opportunities ought to be watched; and it muſt appear, that this it is which is now taken. The opportunity for ſuch ſervice I take to be, when either the enemy may receive the moſt hurt, or when he is likelieſt to attempt againſt us, if he be not impeached. The hurt that our eſtate ſhould ſeek to do him, is to intercept his treaſure, whereby we ſhall cut his ſinews, and make war upon him with his own money; and to beat, or at leaſt diſcontinue him from the ſea, whereby her Majeſty ſhall be both ſecured from his invaſions, and become miſtreſs of the ſea; which is the greatneſs that the queen of an iſland ſhould moſt aſpire unto. In matter of profit, we may this journey moſt hurt him and benefit our ſelves, ſince he hath (as is agreed on by all men) more caracks to come home now, than ever any year before: beſides many good advantages which will be offered if we command the coaſt. And to give him a blow, and diſcountenance him by ſea, now is the time; when he hath declared his ambition to command the ſeas; and yet, ſo divided his fleets: ſome appointed to be ſet out, and yet ſcant in readineſs; others upon point of coming home, and not fit to defend themſelves, if either they be met at ſea, or found in harbour; and all ſo diſperſed in ſeveral places, as if at any time we might do good that way, it is now. And whether he will make war upon us, if we let him alone; let his ſolicitations, offers, and gifts to the rebels of *Ireland*; his beſieging and winning of *Calais*, and thoſe parts of *France* that front upon us, and his ſtrengthening himſelf by ſea by ſo many means; let theſe things (I ſay) tell us. So as if we will at any time allow the counſel of prevention to be reaſonable, we muſt now confeſs it to be opportune. But whatſoever the counſel were, I am not to be charged with it; for as I was not the contriver, nor offerer of the project, ſo if I had refuſed to join with him, (that did invite me to it) I ſhould have been thought both incompatible and backward in her Majeſty's ſervice. I ſay not

this for that I think the action ſuch as it were diſadvantage to be thought the projector of it; but I ſay, and ſay truly, that my lord admiral deviſed it, preſented it to her Majeſty, and had as well the approbation of her Majeſty, and the aſſent of ſuch of your lordſhips as were acquainted with it, as my promiſe to go with him. One thing (I confeſs) I above all men am to be charged withal; that is, that when her Majeſty's, the city of *London*'s, and the ſtates of the *Low-Countries* charge was paſt, the men levied, and marching to the rendezvous, I could not ſee how, with her Majeſty's honour and ſafety, the journey might be broken. Wherein, although I ſhould be carried with paſſion, yet I pray your lordſhips conſider, who almoſt, that had been in my caſe named to ſuch an action, voiced throughout Chriſtendom, and engaged in it as much as I was worth; and being the inſtrument of drawing more voluntary men of their own charge, than ever was ſeen theſe many years; who (I ſay) would not have been ſo affected? But far be it from me, in any action of this importance, to weigh my ſelf, or my particular fortunes. I muſt beſeech your lordſhips to remember, that I was from time to time warranted by all your opinions, delivered both amongſt your ſelves, and to her Majeſty, which tieth you all to allow the counſel; and that being granted, your lordſhips will call that zeal which maketh a man conſtant in a good counſel, that would be paſſion in an evil or a doubtful. I confeſs, her Majeſty offered us recompence for all our charges and loſſes: but (my lords) I pray your lordſhips conſider, how many things I ſhould have ſold at once for money? I will leave mine own reputation as too ſmall a matter to be mentioned: but I ſhould have ſold the honour of her Majeſty, the ſafety of the ſtate, the contentment of her confederates, the fortune and hope of many of my poor countrymen, and the poſſibility of giving a blow to that enemy that ought ever to be hateful to all true *Engliſh* hearts. I ſhould have ſold all this for private profit. Therefore, though I aſk pardon of her Majeſty, and pray your lordſhips to mediate it for me, that I was carried by this zeal ſo faſt, that I forgot thoſe reverend forms which I ſhould have uſed; yet I had rather have my heart out of my body, than this zeal out of my heart. And now, as I have laid before your lordſhips my paſt carriage, and entering into this action, ſo I beſeech your lordſhips give me leave to prepare you to a favourable conſtruction of that which I ſhall do hereafter: in which ſuit I am reſolved neither to plead the hazarding of life, nor ſpending of my ſubſtance in a publick ſervice; to the end that I might find your lordſhips (who are publick perſons) more favourable judges: but will confeſs, that I receive ſo much favour and honour by this truſt and employment, as when I have done all I can, I ſhall ſtill be behind-hand. This ſuit only I make, that your lordſhips will neither have too great an expectation of our actions, nor too little; leſt all we do ſeem either nothing, or to be done by chance. I know we muſt be tied to do no more than ſhall be for her Majeſty's ſervice, nor no leſs. In which ſtrait way, though it be hard for ſo weak a man as my ſelf to walk upright; yet the example of our raw ſoldiers may comfort an unſufficient General: for they, till they grow perfect in all their orders and motions, are ſo afraid to be out, and with ſuch a continual heedfulneſs, obſerve both themſelves and thoſe that are near them, that they do keep almoſt as good order at the firſt as ever after. I am ſure I am as diſtruſtful of my ſelf as they. And becauſe I have more ſenſe of duty, I ſhall be more induſtrious. For ſea-ſervice, the judgment of my honourable companion ſhall be my compaſs. And for land, his aſſent, and the advice of thoſe her Majeſty hath named as counſellors at war, ſhall be my warranties. It will be honour to

her Majeſty, and a great aſſurance to her ſtate, if we either bring home wealth, or give the King of *Spain* a blow by ſea. But to have made a continual diverſion, and to have left as it were a thorn ſticking in his foot, had been a work worthy of ſuch a queen, and of ſuch a preparation: for then her Majeſty ſhould have heard no more of his intentions for *Ireland*, and attempts upon the coaſt of *France*, or his drawing of ſhips or galleys into theſe narrow ſeas; but ſhould at once have delivered all Chriſtendom from his fearful uſurpation. Wherein, as ſhe had been great in fame for ſuch a general preſervation; ſo ſhe had been as great in power in making all the enemies of *Spain* in Chriſtendom to depend upon her. She ſhould be head of the party; ſhe only might be ſaid to make the wars with *Spain*, becauſe ſhe made them to purpoſe; and they all but as her aſſiſtants and dependants. And laſtly, as the end of the wars is peace, ſo ſhe might have had peace when ſhe would, and with what conditions ſhe would, and have included or left out whom ſhe would. For ſhe only, by this courſe, ſhould force him to wiſh for peace, and ſhe had the means in her hands to make the conditions. And as eaſy it had been to have done this, as to have performed leſſer ſervices. The objections againſt this will be hazard and charge. Hazard to hold any thing of his that is ſo mighty a king; and charge, to ſend ſuch ſupplies from time to time as will be needful. For hazard, it is not the hazard of the ſtate or the whole, as are the hazards of a defenſive war, whenſoever we are enforced to fight; but it is only the hazard of ſome few, and ſuch commanders, as ſhall be ſet out for ſuch a ſervice. And thoſe alſo that ſhall be ſo hazarded, ſhall be in leſs danger than if they were put into any frontier places of *France* or of the *Low-Countries*. For they ſhould not be left in any part of the main or continent of *Spain* or *Portugal*, where the enemy might bring an army to attempt them; (though I doubt not, but after he had once tried what it were to beſiege two or three thouſand *Engliſh* in a place well fortified, and where they had a port open, he would grow quickly weary of thoſe attempts;) but they ſhould be ſo lodged, as the ſeat and ſtrength of the place ſhould warrant their ſafety: ſo that to pull her Majeſty's men out of it, ſhould be a harder taſk than to conquer any country that ſtands on firm land by him; and to let the *Engliſh* quietly poſſeſs it, ſhould ſo much prejudice him, as he were not able to endure it; and for charge, there need not ſo much be expended, but that it might eaſily be borne. And the place being well choſen, and the war well conducted, in a ſhort time there would not only ariſe enough to pay the charge, but great profit to her Majeſty, and wealth to our country, would grow from the place that ſhould be held: for in a ſhort time a great part of the golden *Indian* ſtream might be turned from *Spain* to *England*, and her Majeſty be made to give law to all the world by ſea, without her charge. Beſides, this fearful enemy, which is now a terror to all Chriſtendom, ſhould be ſo weakened in ſtrength, reputation, and purſe, as her Majeſty ſhould for ever after have an eaſy enemy of him. It may be your lordſhips will deſire to know the place that ſhould be attempted, the means firſt to take it, then to hold it; the commodity or advantage that might grow to this eſtate by it: but that, with your lordſhips leave, ſhall be reſerved till my next. This is only to beſeech you for our dear Sovereign's ſake, for the glory and welfare of her, and her eſtate, that you will think upon this general propoſition: and if your lordſhips find it reaſonable, that you will move it to the queen; by whom if I be commanded to ſet down the hypotheſis, or to deſcend unto particulars, I will offer my project with this condition, that if I adviſe any thing that the counſel of war

ſhall

ſhall think dangerous, it may be rejected; or if my ſelf be actor in any thing belonging to this project, wherein her Majeſty receives diſhonour, that I may anſwer it with my life. And yet your lordſhips know, I am matched with thoſe in whom I have no particular intereſt; but I muſt attribute their aſſenting to me my good hap, to take the better part. In my lord, with whom I am joined, I find ſo much honour and ſervice, as I doubt not but our unity in affection, will make an unity in counſel, action, and government. I have troubled your lordſhips with a tedious letter, begun in a day of leiſure, and finiſhed in the midſt of our troubleſome buſineſs. I pray your lordſhip's pardon the errors in it, and keep ſo honourable an opinion of me, as I be not condemned by you upon any complaints, advertiſements, or reports, till I have given anſwer to them. For as the nature of my place is ſubject to envy and detraction; ſo a little body full of ſharp humours is hardlieſt kept in temper. And all the diſcontented humours of an army do make their greateſt quarrel to him that commands the army; not ſo much for his faults, as for becauſe he bridles theirs. And ſo commending your good lordſhips to God's divine protection, I reſt at your lordſhips commandment.

ROBERT ESSEX.

XXXII. To my Lord of Essex, from Mr. Bacon, *Oct.* 4. 1596.

My ſingular good Lord,

I Will no longer diſſever part of that, which I meant to have ſaid to your lordſhip at *Barn-Elms*, from the *exordium* which I then made; whereunto I will only add this, that I humbly deſire your lordſhip, before you give acceſs to my poor advice, to look about, even jealouſly a little if you will, and to conſider; firſt, whether I have not reaſon to think, that your fortune comprehendeth mine? Next, whether I ſhift my counſel, and do not *conſtare mihi*; for I am perſuaded, there are ſome would give you the ſame council now which I ſhall, but that they ſhould derogate from that which they have ſaid heretofore? Thirdly, whether you have taken hurt, at any time, by my careful and devoted counſel; for although I remember well your lordſhip once told me, that you having ſubmitted upon my well-meant motion at *Nonſuch* (the place where you renewed a treaty with her Majeſty of obſequious kindneſs) ſhe had taken advantage of it; yet, I ſuppoſe, you do ſince believe, that it did much attemper a cold malignant humour then growing upon her Majeſty toward your lordſhip, and hath done you good in conſequence. And for my being againſt it, now lately, that you ſhould not eſtrange your ſelf, although I give place to none in true gratulation; yet neither do I repent me of ſafe counſel, neither do I judge of the whole play by the firſt act. But whether I counſel you the beſt, or for the beſt, duty bindeth me to offer to you my wiſhes. I ſaid to your lordſhip laſt time, *Martha, Martha, attendis ad plurima, unum ſufficit*; win the queen: if this be not the beginning of any other courſe, I ſee no end. And I will not now ſpeak of favour of affection, but of other correſpondence and agreeableneſs; which, whenſoever it ſhall be conjoined with the other of affection, I durſt wager my life (let them make what *Proſopopoea's* they will of her Majeſty's nature;) that in you ſhe will come to the queſtion of, *Quid fiet homini, quem Rex vult honorare?* But how is it now? A man of a nature not to be ruled, that hath the advan-

tage of my affection, and knoweth it; of an eſtate not grounded to his greatneſs; of a popular reputation; of a military dependence: I demand, whether there can be a more dangerous image than this, repreſented to any monarch living, much more to a lady, and of her Majeſty's apprehenſion? And is it not more evident than demonſtration it ſelf, that whilſt this impreſſion continueth in her Majeſty's breaſt, you can find no other condition than inventions to keep your eſtate bare and low; croſſing and diſgracing your actions; extenuating and blaſting of your merit; carping with contempt at your nature and faſhions; breeding, nouriſhing, and fortifying ſuch inſtruments as are moſt factious againſt you; repulſes and ſcorns of your friends, and dependents that are true and ſtedfaſt; winning and inveigling away from you ſuch as are flexible and wavering; thruſting you into odious employments and offices to ſupplant your reputation; abuſing you and feeding you with dalliances and demonſtrations, to divert you from deſcending into the ſerious conſideration of your own caſe; yea, and perceaſe venturing you in perillous and deſperate enterpriſes. Herein it may pleaſe your lordſhip to underſtand me; for I mean nothing leſs, than that theſe things ſhould be plotted and intended as in her Majeſty's royal mind towards you: I know the excellency of her nature too well. But I ſay, whereſoever the formerly deſcribed impreſſion is taken in any king's breaſt towards a ſubject, theſe other recited inconveniences muſt, of neceſſity of politic conſequence, follow; in reſpect of ſuch inſtruments as are never failing about Princes: which ſpy into their humours and conceits, and ſecond them; and not only ſecond them; but in ſeconding encreaſe them; yea, and many times without their knowledge, purſue them farther than themſelves would. Your lordſhip will aſk the queſtion, wherewith the *Athenians* were wont to interrupt their orators, when they exaggerated their dangers; *Quid igitur agendum eſt?*

I WILL tell your lordſhip, *Quae mihi nunc in mentem veniunt*; ſuppoſing nevertheleſs, that your ſelf, out of your own wiſdom upon the caſe, with this plainneſs and liberty repreſented to you, will find out better expedients and remedies. I wiſh a cure applied to every of the five former impreſſions, which I will take not in order, but as I think they are of weight.

FOR the removing the impreſſion of your nature to be *opiniaſtre* and not rulable: firſt, and above all things I wiſh, that all matters paſt, which cannot be revoked, your lordſhip would turn altogether upon inſatisfaction, and not upon your nature or proper diſpoſition. This ſtring you cannot, upon every apt occaſion, harp upon too much. Next, whereas I have noted you to fly and avoid (in ſome reſpect juſtly) the reſemblance or imitation of my lord of *Leiceſter*, and my lord chancellor *Hatton*; yet I am perſuaded (howſoever I wiſh your lordſhip, as diſtant as you are from them in points of favour, integrity, magnanimity, and merit;) that it will do you much good between the queen and you, to allege them (as oft as you find occaſion) for authors and patterns: For I do not know a readier mean to make her Majeſty think you are in your right way. Thirdly, when at any time your lordſhip upon occaſion happen in ſpeeches to do her Majeſty right (for there is no ſuch matter as flattery amongſt you all) I fear you handle it, *magis in ſpeciem adornatis verbis, quam ut ſentire videaris.* So that a man may read formality in your countenance; whereas your lordſhip ſhould do it familiarly, *& oratione fida.* Fourthly, your lordſhip ſhould never be without ſome particulars afoot, which you ſhould ſeem to purſue with earneſtneſs and affection; and then let them fall, upon taking knowledge of her Majeſty's oppoſition and diſlike. Of which, the weightieſt ſort may be, if your lordſhip offer to la-

bour in the behalf of ſome that you favour, for ſome of the places now void; chuſing ſuch a ſubject as you think her Majeſty is like to oppoſe unto: and if you will ſay that this is *conjunctum cum aliena injuria*, I will not anſwer, *haec non aliter conſtabunt*; but I ſay, commendation from ſo good a mouth doth not hurt a man, though you prevail not. A leſs weighty ſort of particulars may be the pretence of ſome journeys, which, at her Majeſty's requeſt, your lordſhip might relinquiſh; as if you would pretend a journey to ſee your living and eſtate towards *Wales*, or the like: for as for great foreign journeys of employment and ſervice, it ſtandeth not with your gravity to play or ſtratagem with them. And the lighteſt ſort of particulars, which yet are not to be neglected, are in your habits, apparel, wearings, geſtures and the like.

The impreſſion of greateſt prejudice next, is that of a military dependence: wherein I cannot ſufficiently wonder at your lordſhip's courſe, that you ſay, the wars are your occupation, and go in that courſe; whereas, if I might have adviſed your lordſhip, you ſhould have left that perſon at *Plymouth*, more than when in counſel, or in commending fit perſons for ſervice for wars, where it had been in ſeaſon. And here, my lord, I pray miſtake me not: I am not to play now the part of a gown-man, that would frame you beſt to mine own turn. I know what I owe you. I am infinitely glad of this laſt journey now it is paſt; the rather, becauſe you may make ſo honourable a full point for a time. You have property good enough in that greatneſs: There is none can, of many years, aſcend near you in competition. Beſides the diſpoſing of the places and affairs both concerning the wars, (you encreaſing in other greatneſs) will of themſelves flow to you; which will preſerve that dependence in full meaſure. It is a thing that of all things I would have you retain, the time conſidered, and the neceſſity of the ſervice; for other reaſon I know none: yet, I ſay, keep it in ſubſtance, but aboliſh it in ſhews to the Queen; for her Majeſty loveth peace. Next, ſhe loveth not charge. Thirdly, that kind of dependence maketh a ſuſpected greatneſs. Therefore, *quod inſtat agamus*. Let that be a ſleeping honour a while, and cure the Queen's mind in that point. Therefore again, whereas I heard your lordſhip deſigning to your ſelf the earl marſhal's place, or the place of maſter of the ordnance; I did not in my mind ſo well like of either, becauſe of their affinity with a martial greatneſs. But of the places now void, in my judgment and diſcretion, I would name you to the place of lord privy ſeal. For firſt, it is the third perſon of the great officers of the crown. Next, it hath a kind of ſuper-intendence over the ſecretary. It hath alſo an affinity with the court of wards, in regard of the fees from the liveries: And it is a fine honour, quiet place, and worth a thouſand pounds by the year: And my lord admiral's father had it, who was a martial man; and it fits a favourite to carry her Majeſty's image in ſeal, who beareth it beſt expreſſed in heart. But my chief reaſon is, that which I firſt alleged to divert her Majeſty from this impreſſion of a martial greatneſs. In concurrence whereof, if your lordſhip ſhall not remit any thing of your former diligence at the *Star-chamber*; if you ſhall continue ſuch intelligences as are worth the cheriſhing; if you ſhall pretend to be as bookiſh and contemplative as ever you were; all theſe courſes have both their advantages and uſes in themſelves otherwiſe, and ſerve exceeding aptly to this purpoſe. Whereunto I add one expedient more, ſtronger than all the reſt; and for mine own confident opinion, void of any prejudice or danger of diminution of your greatneſs; and that is, the bringing in of ſome martial man to be of the council, dealing directly with her Majeſty in it, as

for her ſervice, and your better aſſiſtance; chuſing nevertheleſs ſome perſon that may be known, not to come in againſt you by any former diviſion. I judge the fitteſt to be my lord *Mountjoy*, or my lord *Willoughby*. And if your lordſhip ſee deeplier into it than I do, that you would not have it done in effect; yet in my opinion, you may ſerve your turn by the pretence of it, and ſtay it nevertheleſs.

THE third impreſſion is of a popular reputation; which, becauſe it is a thing good in it ſelf, being obtained as your lordſhip obtaineth it, that is, *bonis artibus*; and beſides, well governed, is one of the flowers of your greatneſs both preſent and to come; it would be handled tenderly. The only way is to quench it *verbis* and not *rebus*. And therefore to take all occaſions to the Queen, to ſpeak againſt popularity and popular courſes vehemently; and to tax it in all others: but, nevertheleſs, to go on in your honourable common-wealth courſes as you do. And therefore, I will not adviſe you to cure this, by dealing in monopolies, or any oppreſſions: Only, if in parliament your lordſhip be forward for treaſure, in reſpect of the wars, it becometh your perſon well; and if her Majeſty object popularity to you at any time, I would ſay to her, a parliament will ſhew that; and ſo feed her with expectation.

THE fourth impreſſion of the inequality between your eſtate of means, and your greatneſs of reſpects, is not to be neglected. For believe it, my lord, that till her Majeſty find you careful of your eſtate, ſhe will not only think you more like to continue chargeable to her, but alſo have a conceit that you have higher imaginations. The remedies are, firſt, to profeſs it in all ſpeeches to her: Next, in ſuch ſuits wherein both honour, gift and profit, may be taken to communicate freely with her Majeſty, by way of inducing her to grant, that it will be this benefit to you. Laſtly, to be plain with your lordſhip, (for the gentlemen are ſuch as I am beholden to;) nothing can make the Queen, or the world think ſo much that you are come to a provident care of your eſtate, as the altering of ſome of your officers; who though they be as true to you as one hand to the other; yet *opinio veritate major*: But if, in reſpect of the bonds they may be entered into for your lordſhip you cannot ſo well diſmiſs your ſelf of them, this cannot be done but with time.

FOR the fifth and laſt, which is of the advantage of a favourite, as ſever'd from the reſt, it cannot hurt; ſo joined with them, it maketh her Majeſty more fearful and ſhadowy, as not knowing her own ſtrength. The only remedy to this, is to give way to ſome other favourite, as in particular you ſhall find her Majeſty inclined; ſo as the ſubject hath no ill, nor dangerous aſpect towards your ſelf. For otherwiſe, whoſoever ſhall tell me, that you may not have ſingular uſe of a favourite at your devotion, I will ſay he underſtandeth not the Queen's affection, nor your lordſhip's condition. And ſo I reſt.

October 4. 1596.

XXXIII. To my Lord of ESSEX.

It may pleaſe your good Lordſhip.

I PRAY God her Majeſty's weighing be not like the weight of a balance; *gravia deorſum, levia ſurſum.* But I am as far from being altered in devotion

votion towards her; as I am from diſtruſt that ſhe will be altered in opinion towards me, when ſhe knoweth me better. For my ſelf, I have loſt ſome opinion, ſome time, and ſome means; this is my account: but then for opinion, it is a blaſt that goeth and cometh; for time, it is true, it goeth and cometh not; but yet I have learned that it may be redeemed.

For means, I value that moſt; and the rather, becauſe I am purpoſed, not to follow the practice of the law; (if her Majeſty command me in any particular, I ſhall be ready to do her willing ſervice:) and my reaſon is only, becauſe it drinketh too much time, which I have dedicated to better purpoſes. But even for that point of eſtate and means, I partly lean to *Thales* opinion, That a philoſopher may be rich if he will. Thus your lordſhip ſeeth how I comfort my ſelf; to the encreaſe whereof, I would fain pleaſe my ſelf to believe that to be true which my lord treaſurer writeth; which is, that it is more than a philoſopher morally can digeſt. But without any ſuch high conceit, I eſteem it like the pulling out of an aking tooth, which, I remember, when I was a child, and had little philoſophy, I was glad of when it was done. For your lordſhip, I do think my ſelf more beholden to you than to any man: and I ſay, I reckon my ſelf as a common, (not popular, but common;) and as much as is lawful to be encloſed of a common, ſo much your lordſhip ſhall be ſure to have.

Your Lordſhip's, to obey your honourable commands, more ſettled than ever.

XXXIV. To my Lord of Essex.

My ſingular good Lord,

YOUR lordſhip's ſo honourable minding my poor fortune the laſt year, in the very entrance into that great action, (which is a time of leſs leiſure;) and in ſo liberal an allowance of your care, as to write three letters to ſtir me up friends in your abſence, doth, after a ſort, warrant me not to object to my ſelf your preſent quantity of affairs, whereby to ſilence my ſelf from petition of the like favour. I brake with your lordſhip my ſelf at the *Tower*; and I take it my brother hath ſince renewed the ſame motion, touching a fortune I was in thought to attempt, *in genere oeconomico*. *In genere politico*, certain croſs winds have blown contrary. My ſuit to your lordſhip is for your ſeveral letters to be left with me dormant, to the gentlewoman, and either of her parents: Wherein I do not doubt, but as the beams of your favour have often diſſolved the coldneſs of my fortune; ſo in this argument your lordſhip will do the like with your pen. My deſire is alſo, that your lordſhip would vouchſafe unto me, as out of your care, a general letter to my Lord Keeper, for his lordſhip's holding me from you recommended; both in the courſe of my practice, and in the courſe of my employment in her Majeſty's ſervice: wherein, if your Lordſhip ſhall in any *antitheſis* or relation affirm, that his lordſhip ſhall have no leſs fruit of me than of any other whom he may cheriſh, I hope your lordſhip ſhall engage your ſelf for no impoſſibility. Laſtly and chiefly, I know not whether I ſhall attain to ſee your lordſhip before your noble journey; for ceremonies are things infinitely inferiour to my love and to my zeal. This let me, with your allowance, ſay unto you by pen. It is true, that in my well-meaning advices, out of my love to your lordſhip, and perhaps out of the ſtate of mine own mind,

I have ſometimes perſuaded a courſe differing; *ac tibi pro tutis inſignia facta placebunt:* be it ſo, yet remember, that the ſigning of your name is nothing, unleſs it be to ſome good patent or charter, whereby your country may be endowed with good and benefit. Which I ſpeak, both to move you to preſerve your perſon for farther merit and ſervice of her Majeſty and your country, and likewiſe to refer this action to the ſame end. And ſo, in moſt true and fervent prayers, I commend your lordſhip and your work in hand, to the preſervation and conduct of the divine Majeſty; ſo much the more watchful, as theſe actions do more manifeſtly in ſhew, though alike in truth, depend upon his divine providence.

XXXV. To Sir JOHN STANHOPE.

SIR,

YOUR good promiſes ſleep, which it may ſeem now no time to awake. But that I do not find that any general kalendar of obſervation of time ſerveth for the court: and beſides, if that be done, which I hope by this time is done; and that other matters ſhall be done, which we wiſh may be done, I hope to my poor matter, the one of theſe great matters may clear the way, and the other give the occaſion. And though my Lord Treaſurer be abſent, whoſe health nevertheleſs will enable him to be ſooner at court than is expected; eſpecially if this hard weather (too hard to continue) ſhall relent; yet we abroad ſay, his Lordſhip's ſpirit may be there, though his perſon be away. Once I take for a good ground, that her Majeſty's buſineſs ought to keep neither vacation nor holy-day, either in the execution, or in the care and preparation of thoſe whom her Majeſty calleth and uſeth: and therefore I would think no time barred from remembring that, with ſuch diſcretion and reſpect as appertaineth. The concluſion ſhall be, to put you in mind to maintain that which you have kindly begun, according to the reliance I have upon the ſincerity of your affection, and the ſoundneſs of your judgment. And ſo I commend you to God's preſervation.

XXXVI. To my Lord of ESSEX.

My ſingular good Lord,

THE meſſage it pleaſed your lordſhip to ſend me, was to me delivered doubtfully. Whether your lordſhip ſaid you would ſpeak with me at the *Star-Chamber*, or with Mr. *Philip*. If with me, it is needleſs; for gratitude impoſeth upon me ſatisfaction: if with Mr. *Philip*, it will be too late; becauſe ſomewhat muſt (perchance) be done that day. This doubt not ſolved, maketh me write again: the rather, becauſe I did liberally, but yet privately, affirm your lordſhip would write; which if I make not good, it may be a diſcouragement. Your lordſhip's letter, though it have the ſubject of honour and juſtice, yet it ſhall have the ſecrecy of a thing done upon affection. I ſhall ever in a firm duty ſubmit my occaſions, though great, to your lordſhip's reſpects, though ſmall: and this is my reſolution, that when your lordſhip doth for me, you ſhall encreaſe my obligation; when you refuſe to do for

me, you ſhall encreaſe my merit. So leaving the matter wholly to your lordſhip's pleaſure, I commend your lordſhip to the preſervation of the divine Majeſty. From *Grays-Inn.*

Your Lordſhip's ever moſt humbly bounden.

XXXVII. To my Lord of Essex.

My ſingular good Lord,

I May perceive, by my lord keeper, that your lordſhip, as the time ſerved, ſignified unto him an intention to confer with his lordſhip at better opportunity; which in regard of your ſeveral and weighty occaſions, I have thought good to put your lordſhip in remembrance of; that now at his coming to the court it may be executed; deſiring your good lordſhip, nevertheleſs, not to conceive out of this my diligence in ſoliciting this matter, that I am either much in appetite, or much in hope. For as for appetite, the waters of *Parnaſſus* are not like the waters of the *Spaw* that give a ſtomach; but rather they quench appetite and deſires. And for hope, how can he hope much, than can allege no other reaſon than the reaſon of an evil debtor, who will perſuade his creditor to lend him new ſums, and to enter farther in with him to make him ſatisfy the old: And to her Majeſty no other reaſon, but the reaſon of a waterman; I am her firſt man of thoſe who ſerve in counſel of Law? And ſo I commit your lordſhip to God's beſt preſervation.

XXXVIII. To my Lord of Essex.

Moſt honourable, and my ſingular good Lord,

I Cannot but importune your lordſhip, with thanks for your lordſhip's remembring my name to my lord Keeper; which being done in ſuch an article of time, could not but be exceedingly enriched, both in demonſtration and effect; which I did well diſcern by the manner of expreſſing thereof by his lordſhip again to me. This accumulating of your lordſhip's favours upon me hitherto, worketh only this effect; that it raiſeth my mind to aſpire to be found worthy of them, and likewiſe to merit and ſerve you for them. But whether I ſhall be able to pay my vows or no, I muſt leave that to God who hath them *in depoſito:* whom alſo I moſt inſtantly beſeech to give you fruit of your actions, beyond that your heart can propound: *Nam Deus major eſt corde:* Even to the environing of his benedictions, I recommend your Lordſhip.

XXXIX. To the Queen.

It may pleaſe your Majeſty,

Written by Mr. *Bacon*, for my lord of *Eſſex.*

IT were great ſimplicity in me to look for better, than that your Majeſty ſhould caſt away my letter as you have done me; were it not that it is poſſible your Majeſty will think to find ſomewhat in it, whereupon your diſpleaſure may take hold; and ſo indignation may obtain that of you which

favour could not. Neither might I in reaſon preſume to offer unto your Majeſty dead lines, my ſelf being excluded as I am; were it not upon this only argument or ſubject; namely, to clear my ſelf in point of duty. Duty, though my ſtate lie buried in the ſands, and my favours be caſt upon the waters, and my honours be committed to the wind, yet ſtandeth ſurely built upon the rock, and hath been, and ever ſhall be, unforced and unattempted. And therefore, ſince the world, out of error, and your Majeſty, I fear out of art, is pleaſed to put upon me; that I have ſo much as any election or will in this my abſence, from attendance, I cannot but leave this proteſtation with your Majeſty; that I am, and have been merely a patient, and take my ſelf only to obey and execute your Majeſty's will. And indeed, Madam, I had never thought it poſſible that your Majeſty could have ſo diſintereſted your ſelf of me; nor that you had been ſo perfect in the art of forgetting; nor that after a quinteſſence of wormwood, your Majeſty would have taken ſo large a draught of poppy, as to have paſſed ſo many * ſummers without all feeling of my ſufferings. But the only comfort I have is this, that I know your Majeſty taketh delight and contentment in executing this diſgrace upon me. And ſince your Majeſty can find no other uſe of me, I am glad yet I can ſerve for that. Thus making my moſt humble petition to your Majeſty, that in juſtice (howſoever you may by ſtrangeneſs untie, or by violence cut aſunder all other knots) your Majeſty would not touch me in that which is indiſſoluble; that is, point of duty; and that your Majeſty will pardon this my unwarranted preſumption of writing, being to ſuch an end: I ceaſe in all humbleneſs;

Your Majeſty's poor, and never ſo unworthy ſervant,

ESSEX.

XL. To Sir Robert Cecil.

SIR,

I Forbear not to put in paper, as much as I thought to have ſpoken to your honour to-day, if I could have ſtayed: knowing, that if your honour ſhould make other uſe of it, than is due to good meaning, and than I am perſuaded you will; yet to perſons of judgment, and that know me otherwiſe, it will rather appear (as it is) a preciſe honeſty, and this ſame, *ſuum cuique tribuere*, than any hollowneſs to any. It is my luck ſtill to be a-kin to ſuch things as I neither like in nature, nor would willingly meet with in my courſe; but yet cannot avoid, without ſhew of baſe timorouſneſs, or elſe of unkind or ſuſpicious ſtrangeneſs.

[Some *Hiatus* in the Copy.]

And I am of one ſpirit ſtill. I ever liked the *Galeniſts* that deal with good compoſitions; and not the *Paracelſians* that deal with theſe fine ſeparations: and in muſick, I ever loved eaſy airs that go full all the parts together; and not theſe ſtrange points of accord and diſcord. This I write not, I aſſure your honour, officiouſly; except it be according to *Tully's* offices; that is, honeſtly and morally. For though, I thank God, I account upon

* This ſhews this Letter was wrote before the Earl of *Eſſex* had been reconciled to the Queen: and our author not having been called or adviſed with for ſome year and a half before the Earl's going into *Ireland*, determines the date at lateſt to the beginning of 1598.

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the proceeding in the Queen's ſervice, or not proceeding, both ways; and therefore neither mean to fawn nor retire; yet I naturally deſire good opinion with any perſon, which for fortune or ſpirit is to be regarded; much more with a ſecretary of the Queen's, and a couſin-german, and one, with whom I have ever thought my ſelf to have ſome ſympathy of nature, though accidents have not ſuffered it to appear. Thus not doubting of your honourable interpretation, and uſage of that I have written, I commend you to the divine preſervation. From *Grays-Inn.*

XLI. To Sir Robert Cecil.

SIR,

YOUR honour knoweth, my manner is, though it be not the wiſeſt way, yet taking it for the honeſteſt, to do as *Alexander* did by his phyſician, in drinking the medicine, and delivering the advertiſement of ſuſpicion: ſo I truſt on, and yet do not ſmother what I hear. I do aſſure you, Sir, that by a wiſe friend of mine, and not factious toward your honour, I was told with aſſeveration, that your honour was bought by Mr. *Coventry* for two thouſand angels: and that you wrought in a contrary ſpirit to my lord your father. And he ſaid farther, that from your ſervants, from your lady, from ſome counſellors that have obſerved you in my buſineſs, he knew you wrought underhand againſt me: The truth of which tale I do not believe. You know the event will ſhew, and God will right. But as I reject this report, (though the ſtrangeneſs of my caſe might make me credulous) ſo I admit a conceit, that the laſt meſſenger my lord and your ſelf uſed, dealt ill with your honours; and that word (ſpeculation) which was in the Queen's mouth, rebounded from him as a commendation: for I am not ignorant of thoſe little arts. Therefore, I pray, truſt not him again in my matter. This was much to write; but I think my fortune will ſet me at liberty, who am weary of aſſerviling my ſelf to every man's charity. Thus I, *&c.*

XLII. To Foulk Grevil.

SIR,

I Understand of your pains to have viſited me, for which I thank you. My matter is an endleſs queſtion. I aſſure you I had ſaid, *requieſce anima mea:* but now I am otherwiſe put to my pſalter; *nolite confidere.* I dare go no farther. Her Majeſty had, by ſet ſpeech, more than once aſſured me of her intention to call me to her ſervice; which I could not underſtand but of the place I had been named to. And now, whether *invidus homo hoc fecit*; or whether my matter muſt be an appendix to my lord of *Eſſex* ſuit; or whether her Majeſty, pretending to prove my ability, meaneth but to take advantage of ſome errors, which, like enough, at one time or other I may commit; or what it is; but her Majeſty is not ready to diſpatch it. And what though the maſter of the Rolls, and my lord of *Eſſex*, and your ſelf, and others, think my caſe without doubt; yet in the mean time I have a hard condition to ſtand ſo, that whatſoever ſervice I do to her Majeſty, it ſhall be thought to be but *ſervitium viſcatum,* lime-twigs and fetches to place my ſelf;

ſelf; and ſo I ſhall have envy, not thanks. This is a courſe to quench all good ſpirits, and to corrupt every man's nature; which will, I fear, much hurt her Majeſty's ſervice in the end. I have been like a piece of ſtuff beſpoken in the ſhop; and if her Majeſty will not take me, it may be the ſelling by parcels will be more gainful. For to be, as I told you, like a child following a bird, which when he is neareſt flieth away, and liteth a little before, and then the child after it again, and ſo *in infinitum*; I am weary of it, as alſo of wearying my good friends; of whom, nevertheleſs, I hope in one courſe or other gratefully to deſerve. And ſo, not forgetting your buſineſs, I leave to trouble you with this idle letter, being but *juſta & moderata querimonia:* For indeed, I do confeſs, *primus amor* will not eaſily be caſt off. And thus again I commend me to you.

XLIII. To my lord of Essex.

It may pleaſe your good Lordſhip,

I Am very ſorry her Majeſty ſhould take my motion to travail in offence. But ſurely, under her Majeſty's royal correction, it is ſuch an offence as it ſhould be an offence to the ſun, when a man, to avoid the ſcorching heat thereof, flieth into the ſhade. And your lordſhip may eaſily think, that having now theſe twenty years (for ſo long it is and more, ſince I went with * Sir *Amyas Paulet* into *France*, from her Majeſty's royal hand) made her Majeſty's ſervice the ſcope of my life; I ſhall never find a greater grief than this, *relinquere amorem primum.* But ſince, *principia actionum ſunt tantum in noſtra poteſtate*; I hope her Majeſty of her clemency, yea and juſtice, will pardon me, and not force me to pine here with melancholy. For though mine heart be good, yet mine eyes will be ſore; ſo as I ſhall have no pleaſure to look abroad: and if I ſhould otherwiſe be affected, her Majeſty in her wiſdom will but think me an impudent man, that would face out a diſgrace. Therefore, as I have ever found you my good lord and true friend, ſo I pray open the matter ſo to her Majeſty, as ſhe may diſcern the neceſſity of it, without adding hard conceit to her rejection; of which, I am ſure, the latter I never deſerved. Thus, *&c.*

* This letter was therefore wrote about the year 1598.

XLIV. To Sir Robert Cecil, at his being in *France.*

It may pleaſe your honourable Lordſhip,

I Know you will pardon this my obſervance, in writing to you, empty of matter, but out of the fulneſs of my love. I am ſorry that as your time of abſence is prolonged, above that was eſteemed at your lordſhip's ſetting forth; ſo now, upon this laſt advertiſement received from you, there groweth an opinion amongſt better than the vulgar, that the difficulties alſo of your negotiation are encreaſed. But becauſe, I know, the gravity of your nature to be not to hope lightly, it maketh me to deſpair the leſs. For you are *natus ad ardua:* and the indiſpoſition of the ſubject may honour the ſkill of the workman. Sure I am, judgment and diligence ſhall not want in your lordſhip's ſelf: but this was not my purpoſe; being only to ſignify unto your lordſhip, my continual and inceſſant love towards you, thirſting after your return, for many reſpects. So I commend you ever to the good preſervation of the divine Majeſty. *Grays-Inn.* 1598.

At your honour's commandment ever and particularly.

XLV. To Sir Robert Cecil.

My ſingular good Lord,

THE argument of my letters to your lordſhip, rather increaſeth than ſpendeth; it being only the deſire I have to ſalute you; which by your abſence is more augmented than abated. For me to write your lordſhip occurrences either of *Scotiſh* brags, or *Iriſh* plants, or *Spaniſh* ruffling, or *Low-Country* ſtates, were (beſides that it is *alienum quiddam*, from mine own humour) to forget to whom I write; ſave that you, that know true advertiſements, ſometimes deſire and delight to hear common reports; as we that know but common reports, deſire to hear the truth. But to leave ſuch as write to your fortunes, I write to yourſelf, in regard of my love to you; you being as near to me in heart's blood, as in blood of deſcent. This day I had the contentment to ſee your * father, upon occaſion: and methought his lordſhip's countenance was not decayed, nor his cough vehement; but his voice was as faint all the while as at firſt. Thus wiſhing your lordſhip a happy and ſpeedy return, I commend you to the divine Majeſty.

* This ſeems to be written 1598, the time of the lord Burghley's laſt ſickneſs.

XLVI. A Letter of advice to the Earl of Essex, to take upon him the care of *Iriſh* cauſes, when Mr. Secretary Cecil was in *France*, 1598.

My ſingular good Lord,

I Do write, becauſe I had no time fully to expreſs my conceit to your lordſhip, touching *Iriſh* affairs; conſidering them as they may concern your lordſhip; knowing that you will conſider them, as they may concern the ſtate. That it is one of the apteſt particulars that hath come, or can come upon the ſtage for your lordſhip to purchaſe honour upon, I am moved to think for three reaſons. Becauſe, it is ingenerate, in your houſe, in reſpect of my lord your father's noble attempts: becauſe of all the accidents of ſtate on foot at this time, the labour reſteth moſt in that particular; and becauſe the world will make a kind of compariſon, between thoſe that ſet it out of frame, and thoſe that bring it into frame: which kind of honour giveth the quickeſt kind of reflection. The transferring this honour upon your ſelf, conſiſteth in two points: the one, if the principal perſons employ'd, come in by you and depend upon you; the other, if your lordſhip declare your ſelf, and profeſs to undertake a care of that kingdom. For the perſons, it falleth out well, that your lordſhip hath had no intereſt in the perſons of imputation: for neither Sir *William Fitz-Williams*, nor Sir *John Norris*, was yours. Sir *William Ruſſel* was conceived yours, but was curbed. Sir *Coniers Clifford* (as I conceived) dependeth on you, who is ſaid to do well. And if my lord of *Ormond*, in this interim, doth accommodate things well, (as it is ſaid he doth) I take it he hath always had good underſtanding with your lordſhip: ſo as all things hitherto are not only whole and entire, but of favourable aſpect towards your lordſhip, if hereafter you chuſe well: wherein

in your wiſdom you will remember there is a great difference in choice of the perſons, as you ſhall think the affairs to incline to compoſition or to war. Concerning the care of buſineſs, the general and popular conceit hath been, that *Iriſh* cauſes have been much neglected; whereby the very reputation of better care will put life into them. And I am ſure her Majeſty, and my lords of the council, do not think their care diſſolved when they have choſen whom to employ: but that they will proceed in a ſpirit of ſtate, and not leave the main point to diſcretion. Then if a reſolution be taken, a conſultation muſt proceed; and the conſultation muſt be govern'd upon information to be had from ſuch as know the place, and matters in fact: and in taking of information I have always noted there is a ſkill and a wiſdom. But for a beginning and key to that which ſhall follow, it were good your lordſhip would have ſome large and ſerious conference with Sir *William Ruſſel*, Sir *Richard Bingham*, the Earl of *Thomond*, and Mr. *Wilbraham*; to know their relation of the paſt; their opinion of the preſent; and their advice for the future. But I am of opinion much more would be had of them, if your lordſhip ſhall be pleaſed ſeverally to confer; not *obiter*, but expreſsly upon ſome caveat given them to think of it before: for *bene docet qui prudenter interrogat*.

For the points of oppoſing them, I am too much a ſtranger to the buſineſs to deduce them: but in a general topick, methinks the pertinent interrogations muſt be; either of the poſſibility and means of accord; or of the nature of the war; or of the reformation of abuſes; or of the joining of practice with force in the diſunion of the rebels. If your lordſhip doubt to put your ſickle into another's harveſt, yet conſider you have theſe advantages; firſt, time brings it to you in Mr. Secretary's abſence: next, *vis unita fortior*: thirdly, the buſineſs being mixt with matters of war, it is fitteſt for you: and laſtly, I know your lordſhip will carry it with that modeſty and reſpect towards aged dignity, and that good correſpondence towards my dear kinſman and your good friend now abroad, as no inconvenience may grow that way.

Thus have I played the ignorant ſtateſman; which I do to no body but your lordſhip; except I do it to the Queen ſometimes when ſhe trains me on. But your lordſhip will accept my duty and good meaning, and ſecure me touching the privateneſs of that I write.

XLVII. A Letter of advice to the Earl of Essex, upon the treaty with *Tyrone* 1598, before the Earl was nominated for the charge of *Ireland*.

My very good Lord,

Concerning the advertiſements, which your lordſhip imparted to me, touching the ſtate of *Ireland*, I hold them to be no more certain to make judgment upon, than a patient's water to a phyſician: therefore for me upon one water to make a judgment, were indeed like a fooliſh bold mountebank or Dr. *Birket*: yet for willing duties ſake, I will ſet down to your lordſhip what opinion ſprang in my mind upon that I read.

The letter from the council there, leaning to miſtruſt and diſſuade the treaty, I do not much rely on, for three cauſes. Firſt, becauſe it is always the grace and the ſafety from blame of ſuch a council to err in caution: whereunto add, that it may be, they, or ſome of them, are not without envy towards the perſon, who is uſed in treating the accord. Next, becauſe the time of this

treaty

treaty hath no ſhew of diſſimulation; for that *Tyrone* is now in no ſtraights: but he is more like a gameſter that will give over becauſe he is a winner, than becauſe he hath no more money in his purſe. Laſtly, I do not ſee but thoſe articles, whereupon they ground their ſuſpicion, may as well proceed out of fear, as out of falſhood. For the retaining the dependence of the *Vraights*, the protracting the admiſſion of a ſheriff, the refuſing to give his ſon for an hoſtage, the holding off from preſent repair to *Dublin*, the refuſing to go preſently to accord, without including *Odonnell*, and other his aſſociates, may very well come, of an apprehenſion, in caſe he ſhould receive hard meaſure; and not out of treachery, ſo as if the great perſon you write of be faithful, and that you have not heard ſome preſent intelligence of preſent ſuccours from *Spain*, (for the expectation whereof, *Tyrone* would win time;) I ſee no deep cauſe of diſtruſting this courſe of treaty, if the main conditions may be good. For her Majeſty ſeemeth to me to be a winner thereby three ways: firſt, her purſe ſhall have ſome reſt: next, it will divert the foreign deſigns upon the place: thirdly, though her Majeſty be like for a time to govern but *precario*, in the north, and be not (as to a true command) in better ſtate there than before; yet, beſides the two reſpects of eaſe of charge, and advantage of opinion abroad, before mentioned, ſhe ſhall have time to uſe her princely policy in two points to weaken them: the one, by diviſion and diſunion of the heads: the other, by recovering and winning the people from them by juſtice; which of all other courſes is the beſt.

Now for the *Athenian* queſtion: you diſcourſe well; *Quid igitur agendum eſt?* I will ſhoot my fool's bolt, ſince you will have it ſo. The earl of *Ormond*, to be encouraged and comforted. Above all things, the garriſons to be inſtantly provided for. For opportunity maketh a thief: and if he ſhould mean never ſo well now, yet ſuch an advantage as the breaking of her Majeſty's garriſons might tempt a true man.

And becauſe he may as well waver upon his own inconſtancy as upon occaſion, (and wanton variableneſs is never reſtrained but by fear;) I hold it neceſſary he be menaced with a ſtrong war: not by words, but by muſters and preparations of forces here, in caſe the accord proceed not: but none to be ſent over, leſt it diſturb the treaty, and make him look to be over-run as ſoon as he hath laid away arms. And but that your lordſhip is too eaſy to paſs in ſuch cauſes from diſſimulation to verity; I think, if your lordſhip lent your reputation in this caſe; that is, to pretend, that if peace go not on, and the Queen mean to make, not a defenſive war as in times paſt, but a full reconqueſt of thoſe parts of the country, you would accept the charge: I think it would help to ſettle *Tyrone* in his ſeeking accord, and win you a great deal of honour *gratis*.

And that, which moſt properly concerns this action, if it prove a peace, I think her Majeſty ſhall do well to cure the root of the diſeaſe; and to profeſs, by a commiſſion of peaceable men, chiefly of reſpect and countenance, reformation of abuſes, extortions and injuſtices there; and to plant a ſtronger and ſurer government than heretofore, for the eaſe and protection of the ſubject. For the removing of the ſword or government in arms from the Earl of *Ormond*, or the ſending of a deputy, (which will eclipſe it) if peace follow, I think it unſeaſonable.

Lastly, I hold ſtill my opinion, (both for your better information, and the fuller declaration of your care, in meddling in this urgent and meriting ſervice) that your lordſhip have a ſet conference with the perſons I named in my former letter.

XLVIII.

XLVIII. A LETTER of Advice to my Lord of ESSEX, immediately before his going into *Ireland*. 1599.

My ſingular good Lord,

*YOUR late note of my ſilence, in your occaſions, hath made me ſet down theſe few wandring lines, as one that would ſay ſomewhat, and can ſay nothing, touching your lordſhip's intended charge for *Ireland:* which my endeavour I know your lordſhip will accept graciouſly and well; whether your lordſhip take it by the handle of the occaſion miniſtred from your ſelf, or of the affection from which it proceeds.

YOUR lordſhip is deſigned to a ſervice of great merit and great peril; and as the greatneſs of the peril muſt needs include a like proportion of merit; ſo the greatneſs of the merit may include no ſmall conſequence of peril, if it be not temperately governed. For all immoderate ſucceſs extinguiſheth merit, and ſtirreth up diſtaſte and envy; the aſſured forerunners of whole charges of peril. But I am at the laſt point firſt, ſome good ſpirit leading my pen to preſage to your lordſhip ſucceſs; wherein, it is true, I am not without my oracles and divinations; none of them ſuperſtitious, and yet not all natural. For firſt, looking into the courſe of God's providence in things now depending, and calling to conſideration, how great things God hath done by her Majeſty and for her; I collect he hath diſpoſed of this great defection in *Ireland*, thereby to give an urgent occaſion to the reduction of that whole kingdom; as upon the rebellion of *Deſmond* there inſued the reduction of that whole province.

NEXT, your lordſhip goeth againſt three of the unluckieſt vices of all others, diſloyalty, ingratitude, and inſolency; which three offences, in all examples, have ſeldom their doom adjourned to the world to come.

LASTLY, he that ſhall have had the honour to know your lordſhip inwardly, as I have had, ſhall find *bona exta*, whereby he may better ground a divination of good, than upon the diſſection of a ſacrifice. But that part I leave; for it is fit for others to be confident upon you, and you to be confident upon the cauſe; the goodneſs and juſtice whereof is ſuch as can hardly be matched in any example; it being no ambitious war againſt foreigners, but a recovery of ſubjects; and that after lenity of conditions often tried; and a recovery of them not only to obedience, but to humanity and policy, from more than *Indian* barbariſm.

THERE is yet another kind of divination familiar to matters of ſtate; being that which *Demoſthenes* ſo often relied upon in his time; when he ſaid, That which for the time paſt is the worſt of all, is for the time to come the beſt: which is, that things go ill, not by accident, but by errors; wherein, if your lordſhip have been heretofore an awaking cenſor, yet you muſt look for no other now, but *medice cura teipſum:* and though you ſhall not be the happy phyſician that cometh in the declination of the diſeaſe; yet you embrace that condition which many noble ſpirits have accepted for advantage; which is, that you go upon the greater peril of your fortune, and the leſs of your reputation; and ſo the honour countervaileth the adventure; of which honour your lordſhip is in no ſmall poſſeſſion, when that her Majeſty (known to be

* *Our Author obſerves*, I was not called nor adviſed with for ſome year and a half before his lordſhip's [*viz.* the Earl of *Eſſex*'s] going into *Ireland*, *which explains this paſſage*, Apol. Vol. IV. p. 432.

one of the moſt judicious princes in diſcerning of ſpirits that ever governed) hath made choice of you (merely out of her royal judgment; her affection inclining rather to continue your attendance;) into whoſe hand, and truſt, to put the command and conduct of ſo great forces: the gathering the fruit of ſo great charge; the execution of ſo many counſels; the redeeming of the defaults of ſo many former governors; the clearing of the glory, of her ſo many happy years reign, only in this part eclipſed. Nay farther, how far forth the peril of that ſtate is interlaced with the peril of *England*; and therefore, how great the honour is, to keep and defend the approaches or avenues of this kingdom, I hear many diſcourſe; and there is a great difference, whether the tortoiſe gathereth herſelf within her ſhell hurt or unhurt.

And if any man be of opinion, that the nature of the enemy doth extenuate the honour of the ſervice, being but a rebel and a ſavage, I differ from him; for I ſee the juſteſt triumphs that the *Romans* in their greatneſs did obtain; and that whereof the Emperors in their ſtyles took addition and denomination, were of ſuch an enemy as this; that is, people barbarous, and not reduced to civility, magnifying a kind of lawleſs liberty, and prodigal of life, hardened in body, fortified in woods and bogs, and placing both juſtice and felicity in the ſharpneſs of their ſwords: ſuch were the *Germans* and ancient *Britons*, and divers others. Upon which kind of people, whether the victory were a conqueſt, or a reconqueſt, upon a rebellion or a revolt, it made no difference (that ever I could find) in honour. And therefore it is not the enriching predatory war that hath the pre-eminence in honour, elſe ſhould it be more honour to bring in a carrack of rich burden, than one of the twelve *Spaniſh* Apoſtles. But then this nature of people doth yield a higher point of honour, conſidered in truth and ſubſtance, than any war can yield, which ſhould be atchieved againſt a civil enemy; if the end may be, *paciſque imponere morem*, to replant and refound the policy of that nation; to which nothing is wanting, but a juſt and civil government; which deſign, as it doth deſcend unto you from your noble father who loſt his life in that action; (though he paid tribute to nature, and not to fortune;) ſo I hope your lordſhip ſhall be as fatal a captain to this war, as *Africanus* was to the war of *Carthage*, after that both his uncle and father had loſt their lives in *Spain* in the ſame war. Now although it be true, that theſe things which I write (being but repreſentations unto your lordſhip, of the honour and appearance of ſucceſs of the enterpriſe;) be not much to the purpoſe of any advice; yet it is that which is left to me, being no man of war, and ignorant in the particulars of eſtate. For a man may, by the eye, ſet up the white in the midſt of the butt, though he be no archer. Therefore I will only add this wiſh, according to the *Engliſh* phraſe, which termeth a well-willing advice, a wiſh; that your lordſhip in this whole action, looking forward, would ſet down this poſition; that merit is worthier than fame; and looking back hither, would remember this text, *That obedience is better than ſacrifice*. For deſigning to fame and glory may make your lordſhip in the adventure of your perſon to be valiant as a private ſoldier, rather than as a general: it may make you in your commandments rather to be gracious than diſciplinary: it may make you preſs action (in reſpect of the great expectation conceived,) rather haſtily than ſeaſonably and ſafely: it may make you ſeek rather to atchieve the war by force, than by intermixture of practice: it may make you (if God ſhall ſend proſperous beginnings,) rather ſeek the fruition of that honour, than the perfection of the work in hand. And for the other point, that is, the proceeding like a good proteſtant upon expreſs warrant, and not upon good intention, your lordſhip in your wiſdom

knoweth; that as it is moſt fit for you to deſire convenient liberty of inſtructions, ſo it is no leſs fit for you to obſerve the due limits of them; remembring that the exceeding of them may not only procure, in caſe of adverſe accident, a dangerous diſavow; but alſo (in caſe of proſperous ſucceſs) be ſubject to interpretation, as if all were not referred to the right end.

THUS have I preſumed to write theſe few lines to your lordſhip, *in methodo ignorantiae*; which is, when a man ſpeaketh of any ſubject, not according to the parts of the matter, but according to the model of his own knowledge; and moſt humbly deſire your lordſhip, that the weakneſs thereof may be ſupplied in your lordſhip by a benign acceptation, as it is in me by my beſt wiſhing.

XLIX. To my Lord of ESSEX.

My Lord,

CONCEIVING that your lordſhip came now up in the perſon of a good ſervant, to ſee your ſovereign miſtreſs; which kind of compliments are many times, *inſtar magnorum meritorum*; and therefore that it would be hard for me to find you: I have committed to this poor paper the humble ſalutations of him that is more yours than any man's; and more yours than any man. To theſe ſalutations I add a due and joyful gratulation, confeſſing that your lordſhip, in your laſt conference with me before your journey, ſpake not in vain, God making it good; that you truſted, we ſhould ſay, *quis putaſſet?* Which, as it is found true in a happy ſenſe, ſo I wiſh you do not find another *quis putaſſet*, in the manner of taking this ſo great a ſervice. But I hope it is, as he ſaid, *nubecula eſt, cito tranſibit:* And that your lordſhip's wiſdom, and obſequious circumſpection, and patience, will turn all to the beſt. So referring all to ſome time that I may attend you, I commit you to God's beſt preſervation.

L. A LETTER to the Earl of ESSEX, in offer of his ſervice when he was firſt enlarged to *Eſſex-Houſe.*

My Lord,

NO man can expound my doings better than your lordſhip, which makes me need to ſay the leſs; only I humbly pray you to believe, that I aſpire to the conſcience and commendation of *bonus civis*, and *bonus vir*; and that though I love ſome things better (I confeſs) than I love your lordſhip, yet I love few perſons better; both for gratitude's ſake, and for your virtues, which cannot hurt but by accident; of which my good affection, it may pleaſe your lordſhip to aſſure your ſelf; and of all the true effects and offices I can yield. For as I was ever ſorry your lordſhip ſhould fly with waxen wings, doubting *Icarus*'s fortune, ſo for the growing up of your own feathers, be they oſtriches or other kind, no man ſhall be more glad. And this is the axle-tree whereon I have turned, and ſhall turn. Which having already ſignified to you by ſome near mean, having ſo fit a meſſenger for mine own letter, I thought good alſo to redouble by writing. And ſo I commend you to God's protection. From *Gray's-Inn* this 9th of *July*, 1600.

19 *Jul. Cab.*

LI. An

LI. An Anſwer of my Lord of Essex, to the preceding Letter of Mr. Bacon.

Mr. Bacon,

I Can neither expound nor cenſure your late actions; being ignorant of all of them, ſave one; and having directed my ſight inward only to examine my ſelf. You do pray me to believe, that you only aſpire to the conſcience and commendation of *bonus civis*, and *bonus vir*: and I do faithfully aſſure you, that while that is your ambition (though your courſe be active, and mind contemplative) yet we ſhall both, *convenire in eodem tertio*; and *convenire inter nos-ipſos*. Your profeſſion of affection, and offer of good offices, are welcome to me: for anſwer to them I will ſay this; that you have believed I have been kind to you, and you may believe that I cannot be other, either upon humour, or mine own election. I am a ſtranger to all poetical conceits, or elſe I ſhould ſay ſomewhat of your poetical example. But this I muſt ſay, that I never flew with other wings than deſire to merit, and confidence in my ſovereign's favour; and when one of theſe wings failed me, I would light no where but at my ſovereign's feet, though ſhe ſuffered me to be bruiſed with my fall. And till her Majeſty, that knows I was never bird of prey, finds it to agree with her will and her ſervice that my wings ſhould be imped again, I have committed my ſelf to the mue. No power but my God's, and my ſovereign's, can alter this reſolution of

Your retired Friend,

ESSEX.

LII. To my Lord of Essex.

I Am glad your lordſhip hath plunged out of your own buſineſs: Wherein, I muſt commend your lordſhip, as *Xenophon* commended the ſtate of this country, which was this, that having choſen the worſt form of government of all others, they governed the beſt in that kind. *Hoc pace & venia tua*, according to my charter. Now, as your lordſhip is my witneſs, that I would not trouble you whilſt your own cauſe was in hand; (though that I know, that the farther from the term, the better the time was to deal for me;) ſo that being concluded, I preſume I ſhall be one of your next cares. And having communicated with my brother of ſome courſe, either to perfect the firſt, or to make me ſome other way; or rather, by ſeeming to make me ſome other way to perfect the firſt, wherewith he agreed to acquaint your lordſhip; I am deſirous, for mine own better ſatisfaction, to ſpeak with your lordſhip my ſelf: which I had rather were ſomewhere elſe than at court; and as ſoon as your lordſhip will aſſign me to wait on you. And ſo in, *&c.*

LIII. To my Lord of Essex.

It may pleaſe your Lordſhip,

THAT your lordſhip is *in ſtatu quo prius*, no man taketh greater gladneſs than I do; the rather, becauſe I aſſure my ſelf that of your eclipſes, as this hath been the longeſt, it ſhall be the leaſt; as the comical poet ſaith,

Neque

Neque illam tu ſatis noveras, neque te illa: hocque fit, ubi non vere vivitur. For if I may be ſo bold as to ſay what I think, I believe neither your lordſhip looked to have found her Majeſty in all points as you have done; neither her Majeſty *per* caſe, looked to have found your lordſhip as ſhe hath done. And therefore I hope upon this experience may grow more perfect knowledge, and upon knowledge more true conſent; which I, for my part, do infinitely wiſh, as accounting theſe accidents to be like the fiſh *remora*; which though it be not great, yet hath it a hidden property to hinder the ſailing of the ſhip. And therefore, as bearing unto your lordſhip, after her Majeſty, of all publick perſons, the ſecond duty, I could not but ſignify unto you my affectionate gratulation. And ſo I commend your good lordſhip to the beſt preſervation of the divine Majeſty. From *Gray's-Inn.* Terent. Heaut. 1. 1.

LIV. To Sir Robert Cecil.

It may pleaſe your good Honour,

I Am apt enough to contemn *mendacia famae*, yet it is with this diſtinction, as fame walks among inferiors, and not as it hath entrance into ſome ears. And yet, nevertheleſs, in that kind alſo, I intend to avoid a ſuſpicious ſilence, but not to make any baſe apology. It is blown about the town, that I ſhould give opinion touching my lord of *Eſſex* cauſe; firſt, that it was a *praemunire*; and now laſt, that it reached to high treaſon: and this opinion ſhould be given in oppoſition to the opinion of the Lord Chief Juſtice, and of Mr. Attorney General. Sir, I thank God whatſoever opinion my head ſerveth me to deliver to her Majeſty, being aſked, my heart ſerveth me to maintain, the ſame honeſt duty directing me and aſſiſting me. But the utter untruth of this report God and the Queen can witneſs; and the improbability of it, every man that hath wit, more or leſs, can conceive. The root of this I diſcern to be not ſo much a light and humorous envy at my acceſſes to her Majeſty, (which of her Majeſty's grace, being begun in my firſt years, I would be ſorry ſhe ſhould eſtrange in my laſt years; for ſo I account them, reckoning by health, not by age;) as a deep malice to your honourable ſelf; upon whom, by me, through nearneſs, they think to make ſome aſperſion. But as I know no remedy againſt libels and lyes; ſo I hope it ſhall make no manner of diſſeverance of your honourable good conceits and affection towards me; which is the thing I confeſs to fear. For as for any violence to be offered to me, wherewith my friends tell me, to no ſmall terror, that I am threatened, I thank God I have the privy coat of a good conſcience; and have a good while ſince put off any fearful care of life, or the accidents of life. So deſiring to be preſerved in your good opinion, I remain.

This laſt letter ſeems to be wrote 1600. in the interval between the return of the Earl of *Eſſex* from *Ireland*, and his hearing before the Lord Chancellor, *&c.*

LV. To my Lord Henry Howard.

My Lord,

THERE be very few beſides your ſelf, to whom I would perform this reſpect. For I contemn *mendacia famae*, as it walks among inferiors; though I neglect it not, as it may have entrance into ſome ears. For your

lordſhip's love, rooted upon good opinion, I eſteem it highly, becauſe I have taſted the fruits of it; and we both have taſted of the beſt waters, in my account, to knit minds together. There is ſhaped a tale in *London*'s forge, that beateth apace at this time, that I ſhould deliver opinion to the Queen in my lord of *Eſſex* cauſe. Firſt, that it was *praemunire*; and now laſt, that it was high treaſon; and this opinion to be in oppoſition and encounter of the Lord Chief Juſtice's opinion, and the Attorney General's. My lord, (I thank God) my wit ſerveth me not to deliver any opinion to the Queen, which my ſtomach ſerveth me not to maintain; one and the ſame conſcience of duty guiding me and fortifying me. But the untruth of this fable God and my Sovereign can witneſs, and there I leave it; knowing no more remedy againſt lyes, than others do againſt libels. The root, no queſtion of it is, partly, ſome light-headed envy at my acceſſes to her Majeſty; which being begun and continued ſince my childhood, as long as her Majeſty ſhall think me worthy of them, I ſcorn thoſe that ſhall think the contrary. And another reaſon is, the aſperſion of this tale, and the envy thereof, upon ſome greater man, in regard of my nearneſs. And therefore, my lord, I pray you anſwer for me, to any perſon that you think worthy your own reply, and my defence. For my lord of *Eſſex*, I am not ſervile to him, having regard to my ſuperior's duty. I have been much bound unto him. And on the other ſide, I have ſpent more time and more thoughts about his well doing, than ever I did about mine own. I pray God you his friends, amongſt you, be in the right. *Nulla remedia tam faciunt dolorem, quam quae ſunt ſalutaria.* For my part I have deſerved better, than to have my name objected to envy, or my life to a ruffian's violence. But I have the privy coat of a good conſcience. I am ſure theſe courſes and bruits hurt my lord more than all. So having written to your lordſhip, I deſire exceedingly to be preferred in your good opinion and love: And ſo leave you to God's goodneſs.

LVI. Two Letters framed; the one as from Mr. *Anthony Bacon*, to the Earl of *Eſſex*; the other, as the Earl's Anſwer thereunto, both written by Mr. *Francis Bacon*, at the inſtance of Mr. *Anthony Bacon* his Brother, and to be ſhewed to the Queen, upon ſome fit occaſion; as a mean to work her Majeſty to receive the Earl again to favour and attendance at Court: They were deviſed whilſt my Lord remained Priſoner in his own Houſe. See Sir *Francis Bacon*'s Apology to the Earl of *Devonſhire*.

My ſingular good Lord,

THIS ſtanding at a ſtay in your lordſhip's fortunes doth make me, in my love towards your lordſhip, jealous leſt you do ſomewhat, or omit ſomewhat, that amounteth to a new error. For I ſuppoſe that of all former matters there is a full expiation; wherein, for any thing that your lordſhip doth, I for my part (who am remote) cannot caſt nor deviſe wherein any error ſhould be, except in one point, which I dare not cenſure nor diſſuade; which is, that (as the prophet ſaith) in this affliction you look up, *ad manum percutientem*, and ſo make your peace with God. And yet I have heard it noted, that my

my lord of *Leiceſter*, (who could never get to be taken for a ſaint,) nevertheleſs in the Queen's diſfavour waxed ſeeming religious; which may be thought by ſome, and uſed by others, as a caſe reſembling yours, if men do not ſee, or will not ſee the difference between your two diſpoſitions. But to be plain with your lordſhip, my fear rather is, becauſe I hear how ſome of your good and wiſe friends, not unpractiſed in the court, and ſuppoſing themſelves not to be unſeen in that deep and unſcrutable centre of the court, which is her Majeſty's mind, do not only toll the bell, but even ring out peals, as if your fortune were dead and buried, and as if there were no poſſibility of recovering her Majeſty's favour; and as if the beſt of your condition, were to live a private and retired life, out of want, out of peril, and out of manifeſt diſgrace; and ſo in this perſuaſion of theirs, include a perſuaſion to your lordſhip to frame and accommodate your actions and mind to that end: I fear, I ſay, that this untimely deſpair may in time bring forth a juſt deſpair, by cauſing your lordſhip to ſlacken and break off your wiſe, loyal, and ſeaſonable endeavours and induſtry for redintegration to her Majeſty's favour; in compariſon whereof all other circumſtances are but as *atomi*, or rather as a *vacuum*, without any ſubſtance at all. Againſt this opinion it may pleaſe your lordſhip to conſider of theſe reaſons which I have collected, and to make judgment of them: neither out of the melancholy of your preſent fortune, nor out of the infuſion of that which cometh to you by others relation, (which is ſubject to much tincture,) but *ex rebus ipſis*, out of the nature of the perſons and actions themſelves, as the truſtieſt and leaſt deceiving grounds of opinion. For though I am ſo unfortunate as to be a ſtranger to her Majeſty's eye, and much more to her nature and manners; yet by that which is apparent, I do manifeſtly diſcern, that ſhe hath that character of the divine nature and goodneſs; *quos amavit, amavit uſque ad finem:* and where ſhe hath a creature, ſhe doth not deface nor defeat it; inſomuch, as if I obſerve rightly in thoſe perſons whom heretofore ſhe hath honoured with her ſpecial favour, ſhe hath covered and remitted not only defects and ingratitudes in affection, but errors in ſtate and ſervice. *Secondly*, if I can ſpell and ſcholar-like put together the parts of her Majeſty's proceedings now towards your lordſhip, I cannot but make this conſtruction, that her Majeſty in her royal intention never purpoſed to call your lordſhip's doings into publick queſtion; but only to have uſed a cloud without a ſhower, in cenſuring them by ſome temporary reſtraint only of liberty and debarring you from her preſence. For firſt, the handling the cauſe in the *Star-chamber*, you not being called, was enforced by the violence of libelling and rumours; (wherein the Queen thought to have ſatisfied the world, and yet ſpared your lordſhip's appearance;) and after, when that means which was intended for the quenching of malicious bruits, turned to kindle them; (becauſe it was ſaid your lordſhip was condemned unheard, and your lordſhip's ſiſter wrote that piquant letter;) then her Majeſty ſaw plainly, that theſe winds of rumours could not be commanded down without a handling of the cauſe, by making you a party, and admitting your defence. And to this purpoſe I do aſſure your lordſhip, that my brother *Francis Bacon*, who is too wiſe (I think) to be abuſed, and too honeſt to abuſe; though he be more reſerved in all particulars than is needful; yet in generality, he hath ever conſtantly and with aſſeveration affirmed to me, that both thoſe days, that of the *Star-Chamber*, and that at my Lord Keeper's, were won from the Queen merely upon neceſſity and point of honour, againſt her own inclination. *Thirdly*, in the laſt proceeding I note three points, which are directly ſignificant, that her Majeſty did expreſly forbear any point which

was

* Irrecuperable, *Cal.*

was * irreparable, or might make your lordſhip in any degree uncapable of the return of her favour; or might fix any character indelible of diſgrace upon you: for ſhe ſpared the publick place of the *Star-Chamber*, which ſpared ignominy; ſhe limited the charge preciſely not to touch upon any pretence of diſloyalty; and no record remaineth to memory of the charge or ſentence. *Fourthly*, the very diſtinction which was made in the ſentence of ſequeſtration from the places of ſervice in ſtate, and leaving to your lordſhip the place of maſter of the horſe, doth, to my underſtanding, *indicative*, point at this; that her Majeſty meant to uſe your lordſhip's attendance in court, while the exerciſes of the other places ſtood ſuſpended. *Fifthly*, I have heard, and your lordſhip knoweth better than I, that now, ſince you were in your own cuſtody, her Majeſty, in *verbo regio*, and by his mouth, to whom ſhe committeth her royal grants and decrees, hath aſſured your lordſhip ſhe will forbid, and not ſuffer your ruin. *Sixthly*, as I have heard her Majeſty to be a princeſs of that magnanimity, that ſhe will ſpare the ſervice of the ableſt ſubject or peer, when ſhe ſhall be thought to ſtand in need of it: ſo ſhe is of that policy, as ſhe will not loſe the ſervice of a meaner than your lordſhip, where it ſhall depend merely upon her choice and will. *Seventhly*, I hold it for a principle, that generally thoſe diſeaſes are hardeſt to cure whereof the cauſe is obſcure; and thoſe eaſieſt, whereof the cauſe is manifeſt: whereupon I conclude, that ſince it hath been your error in your courſes towards her Majeſty, which hath prejudiced you, that your reforming and conformity will reſtore you; ſo as you may be, *faber fortunae propriae*. *Laſtly*, conſidering your lordſhip is removed from dealing in cauſes of ſtate, and left only to a place of attendance; methinks the ambition of any man, who can endure no partners in ſtate-matters, may be ſo quenched, as that they ſhould not laborioufly oppoſe themſelves to your being in court: ſo as upon the whole matter, I can find neither in her Majeſty's perſon, nor in your own perſon, nor in any third perſon; neither in former precedents, nor in your own caſe, any cauſe of dry and peremptory deſpair. Neither yet do I ſpeak this ſo, but that if her Majeſty, out of her reſolution, ſhould deſign you to a private life, you ſhould not be as willing, upon her appointment, to go into the wilderneſs, as into the land of promiſe. Only I wiſh your lordſhip will not preoccupate deſpair, but put truſt, next to God, in her Majeſty's grace, and not to be wanting to your ſelf. I know your lordſhip may juſtly interpret, that this which I perſuade, may have ſome reference to my particular fortune, becauſe I may truly ſay, *te ſtante*, (not *virebo*, for I am withered in my ſelf, but) *manebo*, or *tenebo*; and that I ſhall in ſome ſort be able to hold out. But though your lordſhip's years and health may expect return of grace and fortune; yet your eclipſe for a time is an *ultimum vale* to my fortune; and were it not that I deſire and hope to ſee my brother eſtabliſhed, by her Majeſty's favour, (as I think him well worthy, for that he hath done and ſuffered) it were time I did take that courſe, from which I diſſuade your lordſhip. But now, in the mean time, I cannot chuſe but perform theſe honeſt duties unto you, to whom I have been ſo deeply bounden.

2

LVII.

LVII. A LETTER framed as from the Earl; in anſwer to the former LETTER.

Mr. BACON,

I THANK you for your kind and careful letter. It perſuades me to that which I wiſh ſtrongly, and hope for weakly; that is, a poſſibility of reſtitution to her Majeſty's favour: but your arguments that would cheriſh hope, turn me to deſpair. You ſay the Queen never meant to call me to publick cenſure, which ſheweth her goodneſs; but you ſee I paſſed under it, which ſheweth others power. I believe moſt ſtedfaſtly her Majeſty never intended to bring my cauſe to a ſentence; and I believe as verily, that ſince that ſentence, ſhe meant to reſtore me to attend upon her perſon. But they that could uſe occaſions (which was not in me to let) and amplify occaſions, and practiſe upon occaſions to repreſent to her Majeſty a neceſſity to bring me to the one, can and will do the like to ſtop me from the other. You ſay my errors were my prejudice, and therefore I can mend my ſelf: it is true; but they that know that I can mend my ſelf, and that if ever I recover the Queen, that I will never loſe her again; will never ſuffer me to re-obtain an intereſt in her favour. And you ſay the Queen never forſook utterly, where ſhe inwardly favoured: but I know not whether the hour-glaſs of time hath altered her mind; yet ſure I am the falſe glaſs of others informations muſt alter her, when I want acceſs to plead my own cauſe. I know I ought doubly, infinitely, to be her Majeſty's; both *jure creationis*, for I am her creature; and *jure redemptionis*, for I know ſhe hath ſaved me from overthrow. But for her firſt love, and for her laſt protection, and for all her great benefits, I can but pray for her Majeſty; and my endeavours are now to make my prayers for her Majeſty and my ſelf better heard. For, thanks be to God, they that can make her Majeſty believe that I counterfeit with her, cannot make God believe that I counterfeit with him: and they which can let me from coming near unto her, cannot let me from drawing near unto him, as I hope I do daily. For your brother, I hold him to be an honeſt Gentleman, and wiſh him all good, much the rather for your ſake. Your ſelf I know hath ſuffered more for me and with me than any friend I have: yet I cannot but lament freely, as you ſee I do; and adviſe you not to do that which I do, which is to deſpair. You know letters what hurt they have done me, and therefore make ſure of this: and yet I could not (as having no other pledge of my love) but communicate freely with you, for the eaſe of my heart and yours.

LVIII. A Letter to Mr. SECRETARY CECIL, after the * defeating of the *Spaniſh* forces in *Ireland*; inciting him to embrace the care of reducing that kingdom to civility, with ſome reaſons ſent incloſed.

It may pleaſe your Honour,

AS one that wiſheth you all encreaſe of honour; and as one that cannot leave to love the ſtate, (what intereſt ſoever I have, or may come to

* Therefore this was wrote 1601.

have in it) and as one that now this dead vacation time hath ſome leiſure, *ad aliud agendum*; I will preſume to propound unto you that which though you cannot but ſee, yet I know not whether you apprehend and eſteem it in ſo high a degree; that is, for the beſt action of importation to your ſelf, of ſound honour and merit to her Majeſty and this crown, without ventoſity and popularity, that the riches of any occaſion, or the tide of any opportunity, can poſſibly miniſter or offer: and that is the cauſes of *Ireland*, if they be taken by the right handle. For if the wound be not ripped up again, and come to a * recrudency by new foreign ſuccours, I think that no phyſician will go on with much letting of blood, *in declinatione morbi*; but will intend to purge and corroborate. To which purpoſe I ſend you mine opinion, without labour of words, in the incloſed; and ſure I am, that if you ſhall enter into the matter, according to the vivacity of your own ſpirit, nothing can make unto you a more gainful return. For you ſhall make the Queen's felicity compleat, which now (as it is) is incomparable; and for your ſelf, you ſhall ſhew your ſelf as good a patriot as you are thought a politick, and make the world perceive you have not leſs generous ends, than dexterous delivery of your ſelf towards your ends; and that you have as well true arts and grounds of government, as the facility and felicity of practice and negotiation; and that you are as well ſeen in the periods and tides of eſtates, as in your own circle and way: than the which, I ſuppoſe nothing can be a better addition and accumulation of honour unto you. This, I hope, I may in privateneſs write, either as a kinſman, that may be bold; or as a ſcholar, that hath liberty of diſcourſe, without the committing any abſurdity. But if it ſeem any error in me thus to intromit my ſelf, I pray your honour believe, I ever loved her Majeſty and the ſtate, and now love your ſelf; and there is never any vehement love, without ſome abſurdity, as the *Spaniard* well ſays; *deſuario con la calentura*. So deſiring your honour's pardon, I ever continue.

* Feſtered ſenſe, *Cab.*

Conſiderations touching the QUEEN's ſervice in IRELAND.

THE reduction of that country, as well to civility and juſtice, as to obedience and peace (which things, as affairs now ſtand, I hold to be inſeparable;) conſiſteth in four points.

1. THE extinguiſhing of the relicks of the war.
2. THE recovery of the hearts of the people.
3. THE removing of the root and occaſions of new troubles.
4. PLANTATIONS and buildings.

FOR the firſt; concerning the places, and times, and particularities of farther proſecution, in fact, I leave it to the opinion of men of war; only the difficulty is, to diſtinguiſh and diſcern the propoſitions, which ſhall be according to the ends of the ſtate here; (that is, final and ſummary towards the extirpation of the troubles;) from thoſe, which though they pretend publick ends, yet may refer indeed to the more private and compendious ends of the council there; or of the particular governours or captains. But ſtill (as I touched in my letter) I do think much letting blood, *in declinatione morbi*, is againſt method of cure: and that it will but induce neceſſity, and exaſperate deſpair; and percaſe diſcover the hollowneſs of that which is done already, which now blazeth to the beſt ſhew. For *Iaglia*'s and proſcriptions of two or three of the principal rebels, they are no doubt, *jure gentium*, lawful: in *Italy* uſually practiſed upon the banditti; beſt in ſeaſon when a ſide goeth down:

Al. Taglaes.

down; and may do good in two kinds; the one, if they take effect; the other, in the diſtruſt which may follow amongſt the rebels themſelves. But of all other points, to my underſtanding, the moſt effectual is, the well expreſſing or impreſſing the deſign of this ſtate, upon that miſerable and deſolate kingdom; containing the ſame between theſe two liſts or boundaries; the one, that the Queen ſeeketh not an extirpation of that people, but a reduction; and that now ſhe hath chaſtiſed them by her royal power and arms, according to the neceſſity of the occaſion, her Majeſty taketh no pleaſure in effuſion of blood, or diſplanting of antient generations. The other, that her Majeſty's princely care is principally and intentionally bent upon the action of *Ireland*; and that ſhe ſeeketh not ſo much the eaſe of charge, as the royal performance of the office of protection, and reclaim of thoſe her ſubjects: and in a word, that the caſe is altered ſo far as may ſtand with the honour of the time paſt: which it is eaſy to reconcile, as in my laſt note I ſhewed. And again I do repeat, that if her Majeſty's deſign be, *ex profeſſo*, to reduce wild and barbarous people to civility and juſtice, as well as to reduce rebels to obedience, it makes weakneſs turn Chriſtianity, and conditions Graces; and ſo hath a fineneſs in turning utility upon point of honour, which is agreeable to the humour of theſe times. And beſides, if her Majeſty ſhall ſuddenly abate the liſts of her forces, and ſhall do nothing to countervail it in point of reputation, of a politic proceeding, I doubt things may too ſoon fall back into the ſtate they were in. Next to this: Adding reputation to the cauſe, by imprinting an opinion of her Majeſty's care and intention upon this action, is the taking away the reputation from the contrary ſide, by cutting off the opinion and expectation of foreign ſuccours; to which purpoſe, this enterprize of *Algiers* (if it hold according to the advertiſement, and if it be not wrapped up in the period of this ſummer) ſeemeth to be an opportunity, *coelitus demiſſa*. And to the ſame purpoſe nothing can be more fit than a treaty, or a ſhadow of a treaty of a peace with *Spain*, which methinks ſhould be in our power to faſten, at leaſt *rumore tenus*, to the deluding of as wiſe people as the *Iriſh*. Laſtly, for this point; that which the ancients called *poteſtas facta redeundi ad ſanitatem*; and, which is but a mockery when the enemy is ſtrong, or proud, but effectual in his declination; that is, a liberal proclamation of grace and pardon to ſuch as ſhall ſubmit, and come in within a time prefixed, and of ſome farther reward to ſuch as ſhall bring others in; that one's ſword may be ſharpened by another's, is a matter of good experience, and now, I think, will come in time. And percaſe, though I wiſh the excluſions of ſuch a pardon exceeding few, yet it will not be ſafe to continue ſome of them in their ſtrength, but to tranſlate them and their generations into *England*; and give them recompence and ſatisfaction here, for their poſſeſſions there; as the King of *Spain* did, by divers families of *Portugal*. To the effecting of all the points aforeſaid, and likewiſe thoſe which fall within the diviſions following, nothing can be in priority, (either of time or matter) better than the ſending of ſome commiſſion of countenance, *ad res inſpiciendas & componendas:* for it will be a very ſignificant demonſtration of her Majeſty's care of that kingdom; a credence to any that ſhall come in and ſubmit; a bridle to any that ſhall have their fortunes there, and ſhall apply their propoſitions to private ends, and an evidence that her Majeſty, after arms laid down, ſpeedily purſueth a politic courſe, without neglect or reſpiration: and it hath been the wiſdom of the beſt examples of government.

TOWARDS

TOWARDS the recovery of the hearts of the people, there be but three things in *natura rerum*.

1. RELIGION.
2. JUSTICE and protection.
3. OBLIGATION and reward.

FOR religion (to ſpeak firſt of piety, and then of policy) all divines do agree, that if conſciences be to be enforced at all (wherein yet they differ) two things muſt precede their inforcement; the one, means of inſtruction; the other, time of operation; neither of which they have yet had. Beſides, till they be more like reaſonable men than they yet are, their ſociety were rather ſcandalous to the true religion, than otherwiſe; as pearls caſt before ſwine: for till they be cleanſed from their blood, incontinency, and theft (which are now not the lapſes of particular perſons, but the very laws of the nation,) they are incompatible with religion reformed. For policy, there is no doubt but to wreſtle with them now, is directly oppoſite to their reclaiming, and cannot but continue their alienation of mind from this government. Beſides, one of the principal pretences, whereby the heads of the rebellion have prevailed both with the people, and with the foreigner, hath been the defence of the catholick religion: and it is this that likewiſe hath made the foreigner reciprocally more plauſible with the rebel. Therefore a toleration of religion (for a time not definite) except it be in ſome principal towns and precincts, after the manner of ſome *French* edicts, ſeemeth to me to be a matter warrantable by religion, and in policy of abſolute neceſſity. And the heſitation in this point (I think) hath been a great caſting back of the affairs there. Neither if any *Engliſh* papiſt or recuſant ſhall, for liberty of his conſcience, transfer his perſon, family, and fortunes thither; do I hold it a matter of danger, but expedient to draw on undertaking, and to further population. Neither if *Rome* will cozen it ſelf, by conceiving it may be ſome degree to the like toleration in *England*, do I hold it a matter of any moment; but rather a good mean to take off the fierceneſs and eagerneſs of the humour of *Rome*; and to ſtay further excommunications, or interdictions for *Ireland*. But there would go hand in hand with this, ſome courſe of advancing religion indeed, where the people is capable thereof; as the ſending over ſome good preachers, eſpecially of that ſort which are vehement and zealous perſuaders, and not ſcholaſtical, to be reſident in principal towns; endowing them with ſome ſtipends out of her Majeſty's revenues, as her Majeſty hath moſt religiouſly and graciouſly done in *Lancaſhire*: and the recontinuing and repleniſhing the college begun at *Dublin*, the placing of good men to be biſhops in the ſees there, and the taking care of the verſions of bibles, and catechiſms, and other books of inſtructions, into the *Iriſh* language; and the like religious courſes, both for the honour of God, and for avoiding the ſcandal and inſatisfaction here, by the ſhew of a toleration of religion in ſome parts there.

FOR juſtice: the barbariſm and deſolation of the country conſidered, it is not poſſible they ſhould find any ſweetneſs at all of juſtice; if it ſhall be (which hath been the error of times paſt) formal, and fetched far off from the ſtate; becauſe it will require running up and down for proceſs; and give occaſion for polling and exactions by fees, and many other delays and charges. And therefore there muſt be an interim in which the juſtice muſt be only ſummary; the rather, becauſe it is fit and ſafe for a time the country do participate of martial government; and therefore, I could wiſh in every principal town or place of habitation, there were a captain or governour; and a judge, ſuch as recorders and learned ſtewards are here in corporations, who may have a prerogative

prerogative commiſſion to hear and determine, *ſecundum ſanam diſcretionem*; and as near as may be to the laws and cuſtoms of *England*; and that by bill or plaint, without original writ; reſerving from their ſentence matter of freehold and inheritance, to be determined before a ſuperior judge itinerant; and both ſentences, as well of the bailywick judge, as itinerant, to be reverſed (if cauſe be) before the counſel of the province to be eſtabliſhed there with fit inſtructions.

For obligation and reward; it is true (no doubt) which was antiently ſaid, that a ſtate is contained in two words, *praemium*, and *poena*; and I am perſuaded, if a penny in the pound which hath been ſpent in *poena* (for this kind of war is but *poena*, a chaſtiſement of rebels, without fruit or emolument to this ſtate) had been ſpent in *praemio*, that is, in rewarding, things had never grown to this extremity. But to ſpeak forwards. The keeping of the principal *Iriſh* perſons in terms of contentment, and without cauſe of particular complaint; and generally the carrying of an even courſe between the *Engliſh* and the *Iriſh*; whether it be in competition, or whether it be in controverſy, as if they were one nation; (without that ſame partial courſe which hath been held by the governours and counſellors there, that ſome have favoured the *Iriſh*, and ſome contrary;) is one of the beſt medicines of that ſtate. And as for other points of contentment, as the countenancing of their nobility as well in this court as there; the imparting of knighthood; the care of education of their children, and the like points of comfort and allurement; they are things which fall into every man's conſideration.

For the extirpating of the ſeeds of troubles, I ſuppoſe the main roots are but three. The firſt, the ambition and abſoluteneſs of the chief of the families and ſepts; the ſecond, the licentious idleneſs of their kerns and ſoldiers that lie upon the country, by ceſſes and ſuch like oppreſſions. And the third, the barbarous laws, cuſtoms, their *brehen* laws, habits of apparel, their poets or heralds that enchant them in ſavage manners, and ſundry other ſuch dregs of barbariſm and rebellion, which by a number of politic ſtatutes of *Ireland*, meet to be put in execution, are already forbidden; unto which ſuch additions may be made as the preſent time requireth. But the deducing of this branch requireth a more particular notice of the ſtate and manners there, than falls within my compaſs.

For plantations and buildings, I do find it ſtrange that in the laſt plot for the population of *Munſter*, there were limitations how much in demeſne, and how much in farm, and how much in tenancy: again, how many buildings ſhould be erected, how many *Iriſh* in mixture ſhould be admitted, and other things foreſeen almoſt to curioſity; but no reſtraint that they might not build *ſparſim* at their pleaſure; nor any condition that they ſhould make places fortified and defenſible: which omiſſion was a ſtrange neglect and ſecureneſs to my underſtanding. So as for this laſt point of plantations and buildings, there be two conſiderations which I hold moſt material; the one for quickening, and the other for aſſuring. The firſt is, that choice be made of ſuch perſons for the government of towns and places, and ſuch undertakers be procured, as be men gracious and well beloved, and are like to be well followed. Wherein for *Munſter* it may (becauſe it is not *res integra*; but that the former undertakers ſtand intereſted) there will be ſome difficulty: but ſurely, in mine opinion, either by agreeing with them, or by over-ruling them with a parliament in *Ireland*; (which in this courſe of a politick proceeding, infinite occaſions will require ſpeedily to be held;) it will be fit to ſupply fit qualified perſons for undertakers. The other, that it be not left (as heretofore) to the

pleaſure of the undertakers and adventurers, where and how to build and plant; but that they do it according to a preſcript or formulary. For firſt, the places both maritime and inland, which are fitteſt for colonies or garriſons; as well for doubt of the foreigner, as for the keeping the country in bridle, would be found ſurveyed and reſolved upon: and then that the patentees be tied to build in thoſe places only, and to fortify as ſhall be thought convenient. And laſtly, it followeth of courſe, in countries of new populations, to invite and provoke inhabitants by ample liberties and charters.

LIX. To my Lord of CANTERBURY, [Dr. *Whitgift.*]

It may pleaſe your Grace,

I HAVE conſidered the objections, peruſed the ſtatutes, and framed the alterations, which I ſend, ſtill keeping my ſelf within the brevity of a letter, and form of a narration; not entering into a form of argument or diſputation: for, in my poor conceit, it is ſomewhat againſt the Majeſty of princes actions, to make too curious and ſtriving apologies, but rather to ſet them forth plainly, and ſo as there may appear an harmony and conſtancy in them, ſo that one part upholdeth another. And ſo I wiſh your Grace all proſperity. From my poor lodging this, *&c.*

Your Grace's moſt dutiful pupil and ſervant.

LX. To Sir THOMAS LUCY.

SIR,

THERE was no news better welcome to me this long time, than that of the good ſucceſs of my kinſman; wherein if he be happy, he cannot be happy alone, it conſiſting of two parts. And I render you no leſs kind thanks for your aid and favour towards him, than if it had been for my ſelf; aſſuring you that this bond of alliance ſhall on my part tye me to give all the tribute to your good fortune upon all occaſions, that my poor ſtrength can yield. I ſend you, ſo required, an abſtract of the lands of inheritance; and one leaſe of great value which my kinſman bringeth; with a note of the tenures, values, contents, and ſtate, truly and perfectly drawn; whereby you may perceive the land is good land, and well countenanced by ſcope of acres, woods, and royalties; though the total of the rents be ſet down as it now goeth, without improvement; in which reſpect it may ſomewhat differ from your firſt note. Out of this, what he will aſſure in jointure, I leave it to his own kindneſs; for I love not to meaſure affection. To conclude, I doubt not your daughter might have married to a better living, but never to a better life; having choſen a gentleman bred to all honeſty, virtue, and worth, with an eſtate convenient. And if my brother or my ſelf were either thrivers, or fortunate in the Queen's ſervice, I would hope there ſhould be left as great an houſe of the *Cokes* in this gentleman, as in your good friend Mr. Attorney General. But ſure I am, if ſcriptures fail not, it will have as much of God's bleſſing; and ſufficiency is ever the beſt feaſt, *&c.*

LXI. A LETTER* of recommendation of his ſervice to the Earl of NORTHUMBERLAND, a few days before Queen ELIZABETH'S death.

It may pleaſe your good Lordſhip,

AS the time of ſowing a ſeed is known, but the time of coming up and diſcloſing is caſual, or according to the ſeaſon; ſo I am witneſs to my ſelf, that there hath been covered in my mind a long time, a ſeed of affection and zeal towards your lordſhip, ſown by the eſtimation of your virtues, and your particular honours and favours to my brother deceaſed, and my ſelf; which ſeed ſtill ſpringing, now burſteth forth into this profeſſion. And to be plain with your lordſhip, it is very true; (and no winds or noiſes of civil matters, can blow this out of my head or heart;) that your great capacity and love towards ſtudies and contemplations of an higher and worthier nature than popular (a nature rare in the world, and in a perſon of your lordſhip's quality almoſt ſingular); is to me a great and chief motive to draw my affection and admiration towards you. And therefore, good my lord, if I may be of any uſe to your lordſhip, by my head, tongue, or pen, means or friends, I humbly pray you to hold me your own; and herewithal, not to do ſo much diſadvantage to my good mind, nor partly to your own worth, as to conceive that this commendation of my humble ſervice proceedeth out of any ſtraits of my occaſions, but merely out of an election, and indeed the fulneſs of my heart. And ſo wiſhing your lordſhip all proſperity, I continue, *&c.*

* This letter is printed twice in the *Cabala,* and inſcribed to the Earl of *Northumberland,* p. 25. and to the Earl of *Northampton,* p. 27.

LETTERS,

LETTERS, in the reign of King JAMES.

LXII. To Mr. *FOWLYS.

SIR,

THE occaſion awaketh in me the remembrance of the conſtant and mutual good offices, which paſſed between my good brother and your ſelf; whereunto (as you know) I was not altogether a ſtranger; tho' the time and deſign (as between brethren) made me more reſerved. But well do I bear in mind the great opinion which my brother (whoſe judgment I much reverence) would often expreſs to me, of your extraordinary ſufficiency, dexterity, and temper, which he had found in you, in the buſineſs and ſervice of the King our Sovereign Lord †. This later bred in me an election, as the former gave an inducement for me, to addreſs my ſelf to you; and to make this ſignification of my deſire towards a mutual entertainment of good affection and correſpondence between us: hoping that both ſome good effect may reſult of it towards the King's ſervice; and that for our particulars, though occaſion give you the precedence of furthering my being known, by good note, unto the King; ſo no long time will intercede before I, on my part, ſhall have ſome means given to requite your favours, and to verify your commendation. And ſo with my loving commendations, good Mr. *Fowlys*, I leave you to God's goodneſs. From *Grays-Inn* 27 *March* 1603.

* Upon the death of Queen *Elizabeth*, Mr. *Fowlys* was ſent out of *Scotland* with letters to divers of the lords of the privy council; ſoon after whoſe arrival the Lord Treaſurer, the Lord High Admiral and Sir *Robert Cecil*, principal Secretary of State, return'd a large letter of thanks, and of advice to the King concerning the then poſture of affairs. He was afterwards created a Baronet by the name of Sir *David Fowlys* of *Ingleby*, in the north-riding of *Yorkſhire*, where he had ſeated himſelf, and where his poſterity now remain. *Stephens.*

† Mr. *Anthony Bacon*, the elder and only brother to our author, of the whole blood, reported to have been equal to him in height of wit, tho' inferiour in the improvements of learning and knowledge. Sir *Henry Wotton* obſerves, that he was a gentleman of impotent feet, but of a nimble head, through whoſe hands ran all the intelligences with *Scotland*. *Stephens.*

LXIII. To Mr. FOWLYS.

Mr. FOWLYS,

I DID write unto you yeſterday by Mr. *Lake*, (who was diſpatched hence from their lordſhips) a letter of reviver of thoſe ſparks of former acquaintance between us in my brother's time: and now, upon the ſame confidence, finding ſo fit a meſſenger, I would not fail to ſalute you; hoping it will fall out ſo happily, as that you ſhall be one of the King's ſervants, which his Majeſty will firſt employ here with us; where I hope to have ſome means not to be barren in friendſhip towards you.

WE all thirſt after the King's coming, accounting all this but as the dawning of the day before the riſing of the ſun, till we have his preſence. And though now his Majeſty muſt be *Janus bifrons*, to have a face to *Scotland*, as well as to *England*, yet *quod nunc inſtat agendum:* the expectation is here that he will come in ſtate, and not in ſtrength †. So for this time I commend you to God's goodneſs. 28 *March* 1603.

† My lord *Bacon*, in his hiſtory of K. *Henry* VII, obſerves the like conduct in that wiſe prince, in order to quiet the fears of the people, and diſperſe the conceit of his coming in by *conqueſt*.

LXIV.

LXIV. To Sir † THOMAS CHALONER, then in *Scotland*, before his Majesty's entrance.

SIR,

FOR our money-matters, I am assured you received no insatisfaction; for you know my mind, and you know my means; which now the openness of the time, caused by this blessed consent, and peace, will encrease; and so our agreement, according to your time, be observed. For the present, according to the *Roman* adage, (that one cluster of grapes ripeneth best besides another;) I know you hold me not unworthy, whose mutual friendship you should cherish: and I, for my part, conceived good hope, that you are likely to become an acceptable servant to the King our master: not so much for any way made heretofore, (which, in my judgment, will make no great difference) as for the stuff and sufficiency which I know to be in you; and whereof, I know, his Majesty may reap great service. And therefore, my general request is, that according to that industrious vivacity which you use towards your friends, you will further his Majesty's good conceit and inclination towards me, to whom words cannot make me known, neither mine own, nor others; but time will, to no disadvantage of any that shall fore-run his Majesty's experience, by their testimony and commendation. And though occasion give you the precedence of doing me this special good office; yet I hope no long time will intercede before I shall have some means to requite your favour, and acquit your report. More particularly, having thought good to make oblation of my most humble service to his Majesty by a few lines, I desire your loving care and help, by your self, or such means as I refer to your discretion, to deliver and present the same to his Majesty's hands: Of which letter I send you a copy, that you may know what you carry; and may take of Mr. *Matthew* the letter it self, if you be pleased to undertake the delivery. Lastly, I do commend to your self, and such your courtesies, as occasion may require, this gentleman Mr. *Matthew*, eldest son to my lord bishop of *Duresme*, and my very good friend, assuring you that any courtesy you shall use towards him, you shall use to a very worthy young gentleman, and one, I know, whose acquaintance you will much esteem. And so I ever continue. 1603.

† Sir *Thomas Chaloner* was son to Sir *Tho. Chaloner*, who had behaved himself with great valour, under the command of the Emperor *Charles* V, and the Duke of *Somerset*, and with equal prudence, in the courts of the Emperor and the King of *Spain*; whither he was sent ambassador in the beginning of the reign of Queen *Elizabeth*. The son was, like his father, a gentleman of great parts and abilities, to whose care K. *James* committed the tuition of prince *Henry*, 17 *Aug.* 1603. *Rymer*, xvi. 545. Sir *Thomas* had, a few years before, made the first discovery of alum-mines in this nation, at or near *Gisborough* in *Yorkshire*; where some of his name and family still continue. He survived his royal pupil just three years, dying in *November*, 1615. *Stephens.*

LXV. An offer of service to the KING, upon his first coming in.

It may please your most excellent Majesty,

IT is observed by some, upon a place in the *Canticles*, *ego sum flos campi, & lilium convallium*, that *à dispari*, it is not said, *ego sum flos horti, & lilium montium*; because the Majesty of that person is not enclosed for

a few, nor appropriate to the great. And yet, notwithſtanding this royal virtue of acceſs, which both nature and judgment have planted in your Majeſty's mind, as the portal of all the reſt, could not of it ſelf (my imperfections conſidered) have animated me to make oblation of my ſelf immediately to your Majeſty, had it not been joined with an habit of the like liberty, which I enjoyed with my late dear ſovereign miſtreſs; a princeſs happy in all things elſe, but moſt happy in ſuch a ſucceſſor. And yet farther, and more nearly, I was not a little encouraged, not only upon a ſuppoſal, that unto your Majeſty's ſacred ear, (open to the air of all virtues) there might perhaps have come ſome † ſmall breath of the good memory of my father, ſo long a principal counſellor in this your kingdom *; but alſo a more particular knowledge of the infinite devotion and inceſſant endeavours, (beyond the ſtrength of his body, and the nature of the times) which appeared in my good brother, Mr. *Anthony Bacon*, towards your Majeſty's ſervice; and were on your Majeſty's part, through your ſingular benignity, by many moſt gracious and lively ſignifications and favours accepted and acknowledged, beyond the merit of any thing he could effect: which endeavours and duties, for the moſt part, were common to my ſelf with him, though by deſign, (as between brethren) diſſembled. And therefore, moſt high and mighty King, my moſt dear and dread ſovereign lord, ſince now the corner ſtone is laid of the mightieſt monarchy in *Europe*; and that God above, who hath ever a hand in bridling the floods and motions both of the ſeas, and of people's hearts, hath by the miraculous and univerſal conſent, (the more ſtrange, becauſe it proceedeth from ſuch diverſity of cauſes) in your coming in, given a ſign and token of great happineſs by the continuance of your reign; I think there is no ſubject of your Majeſty's, which loveth this iſland, and is not hollow or unworthy, whoſe heart is not ſet on fire, not only to bring you peace-offerings, to make you propitious; but to ſacrifice himſelf a burnt-offering or *holocauſt* to your Majeſty's ſervice: amongſt which number no man's fire ſhall be more pure and fervent than mine; but how far forth it ſhall blaze out, that reſteth in your Majeſty's ‡ employment. So thirſting after the happineſs of kiſſing your royal hand, I continue ever. 1603.

† Notice, *Matth.*

‡ Pleaſure to ordain, *Matt.*

* Sir *N. Bacon*, L. Keeper of the great ſeal from the firſt to the 21 *Elizabeth.*

LXVI. A letter commending his love to the lord of † *Kingloſſe* upon his Majeſty's entrance.

My Lord,

THE preſent occaſion awakeneth in me a remembrance of the conſtant amity and mutual good offices which paſſed between my brother deceaſed and your lordſhip, whereunto I was leſs ſtrange than in reſpect of the time, I had reaſon to pretend; and withal, I call to mind the great opinion which my brother, who ſeldom failed in judgment of a perſon, would often expreſs to me of your lordſhip's great wiſdom and ſoundneſs, both in head and heart, towards the ſervice and affairs of our ſovereign lord the King.

† Edward Bruce Mil. Dom Kinloſſe, Magiſt. Rotulorum curiae cancellariae, 19 Jul. 1603. Rymer xvi. p. 491.

THE one of thoſe hath bred in me an election, and the other a confidence to addreſs my good will and ſincere affection to your good lordſhip; not doubting, in regard that my courſe of life hath wrought me not to be altogether unſeen in the matters of the kingdom, that I may be in ſome uſe, both in point of ſervice to the King, and in your lordſhip's particular.

AND on the other ſide, I will not omit to deſire humbly your lordſhip's favour, in furthering a good conceit and impreſſion of my moſt humble duty and true zeal towards the King; to whoſe Majeſty words cannot make me known, neither mine own nor others; but time will, to no diſadvantage of any, that ſhall forerun his Majeſty's experience, by their humanity and commendations: And ſo I commend your good lordſhip to God's providence and protection.

From *Gray's-Inn, &c.* 1603.

LXVII. A letter to Doctor *Moriſon*, a *Scottiſh* phyſician, upon his Majeſty's coming in.

Mr. Doctor MORISON,

I HAVE thought good by this my letter to renew this my ancient acquaintance which hath paſſed between us, ſignifying my good mind to you, to perform to you any good office, for your particular, and my expectation; and a firm aſſurance of the like on your part towards me: wherein I confeſs you may have the ſtart of me, becauſe occaſion hath given you the precedency in inveſting you with opportunity to uſe my name well, and by your loving teſtimony to further a good opinion of me in his Majeſty, and the court.

BUT I hope my experience of matters here will, with the light of his Majeſty's favour, enable me ſpeedily both to requite your kindneſs, and to acquit and make good your teſtimony and report. So not doubting to ſee you here with his Majeſty; conſidering that it belongeth to your art to feel pulſes: And I aſſure you, *Galen* doth not ſet down greater variety of pulſes, than do vent here in men's hearts. I wiſh you all proſperity, and remain

Yours, &c.

From my chamber at *Gray's-Inn, &c.* 1603.

LXVIII. To Mr. † *Davis*, gone to meet the King.

Mr. DAVIS,

THOUGH you went on the ſudden, yet you could not go before you had ſpoken with yourſelf, to the purpoſe which I will now write: And therefore I know it ſhall be altogether needleſs, ſave that I meant to ſhew you, that I was not aſleep. Briefly, I commend myſelf to your love, and the well uſing of my name; as well in repreſſing and an-

† Mr. *Davis* having made his way unto the knowledge of K. *James*, by a poem he dedicated unto the late Queen, entitled, *Noſce teipſum*, was very favourably received by the King; and not long after made his attorney-general in *Ireland*, and ſerjeant at law: And in the next reign, was nominated to be chief juſtice of the King's-bench in *England* upon the diſplacing of Sir *Randal Crew*; but died ſuddenly on 27 *December*, 1626. He was very converſant with the wits of his time; ſome of his writings declare his excellency in that kind, as others do his abilities in his own profeſſion. *Stephens.*

ſwering

ſwering for me, if there be any biting or nibling at it in that place; as by imprinting a good conceit and opinion of me, chiefly in the King, (of whoſe favour I make myſelf comfortable aſſurance) as otherwiſe in that court. And not only ſo, but generally to perform to me all the good offices which the vivacity of your wit can ſuggeſt to your mind, to be performed to one, with whoſe affection you have ſo great ſympathy; and in whoſe fortune you have ſo great intereſt. So deſiring you to be good to concealed poets, I continue. 1603.

LXIX. To Mr. *Robert Kempe*, upon the death of Queen *Elizabeth*.

Mr. KEMPE,

THIS alteration is ſo great, as you might juſtly conceive ſome coldneſs of my affection towards you, if you ſhould hear nothing from me, I living in this place. It is in vain to tell you with what wonderful ſtill and calm this wheel is turned round; which, whether it be a *remnant* of her *felicity* that is gone, or a *fruit* of his *reputation* that is coming, I will not determine. For I cannot but divide myſelf between her *memory* and his name: Yet we account it but a fair morn, before ſun-riſing, before his Majeſty's preſence: tho' for my part I ſee not whence any weather ſhould ariſe. The Papiſts are contained with fear enough, and hope too much. The *French* is thought to turn his practice upon procuring ſome diſturbance in *Scotland*, where crowns may do wonders: But this day is ſo welcome to the nation, and the time ſo ſhort, as I do not fear the effect. My lord of *Southampton* expecteth releaſe by the next diſpatch, and is already much viſited and much well wiſhed. There is continual poſting by men of good quality towards the King: The rather, I think, becauſe this ſpring-time it is but a kind of ſport. It is hoped, that as the ſtate here hath performed the part of good attorneys to deliver the King quiet poſſeſſion of his kingdoms, ſo the King will redeliver them quiet poſſeſſion of their places; rather filling places void, than removing men placed. So, *&c.* 1603.

LXX. To the earl of * *Northumberland*, recommending a proclamation to be made by the King at his entrance.

It may pleaſe your Lordſhip,

I Do hold it a thing formal and neceſſary for the King to forerun his coming, (be it never ſo ſpeedy) with ſome gracious declaration for the

* *Henry Piercy*, the ninth earl of *Northumberland* of that name, had not only great learning himſelf, but was alſo patron of other learned men, eſpecially mathematicians. And tho' no man eſpouſed the title of K. *James* to the *Engliſh* throne with a greater zeal than himſelf; declaring that he would remove all impediments by his ſword: Yet the King (perhaps fearing that one who thought he could confer crowns, might attempt to reſume them) cauſed this great man to be effectually proſecuted in the ſtar-chamber in the year 1606, upon a ſuppoſition of his being privy to the powder-plot, or at leaſt of concealing his couſin Mr. *Thomas Piercy* one of the conſpirators therein; that he was fined 30000 *l.* and condemned to perpetual impriſonment. But the lord *Hay*, afterwards created viſcount *Doncaſter* and earl of *Carliſle*, marrying in 1617 his youngeſt daughter the lady *Lucy Piercy*, a lady of the moſt celebrated wit and beauty of any in her times; his releaſe from the tower was obtained about the year 1621. Tho' it is ſaid the earl was with great difficulty prevail'd to accept of this favour, becauſe procured by a man, he diſdained to own to be ſo near a relation as that of a ſon. *Stephens.*

cheriſhing, entertaining, and preparing of men's affections *. For which purpoſe I have conceived a draught, it being a thing familiar in my miſtreſs her times, to have my pen uſed in publick writings of ſatisfaction. The uſe of this may be in two ſorts: Firſt, properly, if your lordſhip think it convenient to ſhew the King any ſuch draught, becauſe the veins and pulſes of this ſtate cannot but be beſt known here; which if your lordſhip ſhould do, then I would deſire you to withdraw my name, and only ſignify, that you gave ſome heads of direction of ſuch a matter to one, of whoſe ſtyle and pen you had ſome opinion. The other, collateral; That tho' your lordſhip make no other uſe of it, yet it is a kind of portraiture of that which I think worthy to be adviſed by your lordſhip to the King; and perhaps more compendious and ſignificant, than if I had ſet them down in articles. I would have attended your lordſhip but for ſome little phyſick I took. To-morrow morning I will wait on you. So I ever, *&c.* 1603.

* Inſtead of this declaration, Sir *Francis Bacon* tells us, that at this 'time there came forth in 'print the King's book, containing matter of inſtruction to the Prince his ſon, touching the office of 'a King; which falling into every man's hand, filled the whole realm as with a good perfume or 'incenſe before the King's coming in; *and* far exceeded any formal or curious edict or declaration, 'which could have been deviſed of that nature, wherewith princes in the beginning of their reigns 'do uſe to grace themſelves, or at leaſt expreſs themſelves gracious in the eyes of their people. *Vol.* III. *p.* 511.

LXXI. To the Earl of † *Southampton*, upon the King's coming in.

It may pleaſe your Lordſhip,

I WOULD have been very glad to have preſented my humble ſervice to your lordſhip by my attendance, if I could have foreſeen that it ſhould not have been unpleaſing unto you. And therefore, becauſe I would be ſure to commit no error, I choſe to write; aſſuring your lordſhip, how little ſoever it may ſeem credible to you at firſt, yet it is as true as a thing that God knoweth; that this great change hath wrought in me no other change towards your lordſhip than this, that I may ſafely be that to you now, which I was truly before. And ſo craving no other pardon, than for troubling you with my letter, I do not now begin to be, but continue to be

1603. *Your lordſhip's humble and much devoted*

FR. BACON.

† *Henry Wriotheſley* earl of *Southampton* having been involved in the guilt of the unfortunate earl of *Eſſex*, was condemned for the ſame crimes; but that earl, who ſeemed careleſs of his own life, interceded for the life of his friend, as did *Southampton*'s own modeſt behaviour at his trial: From which time he ſuffer'd impriſonment in the tower till the 10th of *April*, 1603. He was afterwards reſtored in blood, made knight of the garter, and one of his Majeſty's privy council. *Stephens.*

LXXII. To Mr. ‡ *Matthews*, ſignifying the wiſe proceeding of King *James* at his firſt entrance into *England*.

SIR,

I WAS heartily glad to hear that you had paſſed ſo great a part of your * journey in ſo good health. My aim was right in my addreſs of letters to thoſe perſons in the court of *Scotland*, who were likelieſt to be uſed for

* *viz.* Into *Scotland* to meet the King. See N. LXIV.

‡ Mr. *Matthews* was ſon to Dr. *Toby Matthews* biſhop of *Durham*, afterwards archbiſhop of *York*; an eminent divine, conſider'd either in the ſchools, the pulpit, or the epiſcopal chair. He was born in *Oxford* in 1578, whilſt his father was dean of *Chriſt's-Church*; but was, to the great grief of his parents, a few years after the King's acceſſion, reconciled to the church of *Rome*, through the means, as

for the affairs of *England*; but the pace they held was too ſwift, for the men were come away before my letters could reach them. With the firſt I have renewed acquaintance, and it was like a bill of revivor, by way of croſs-ſuits; for he was as ready to have begun with me. The ſecond did this day arrive, and took acquaintance with me inſtantly in the council-chamber, and was willing to entertain me with farther demonſtrations of confidence, than I was willing at that time to admit. But I have had no ſerious ſpeech with him, nor do I yet know whether any of the doubles of my letter have been delivered to the King. It may perhaps have proved your luck to be the firſt.

THINGS are here in good quiet. The King acts excellently well; for he puts in clauſes of reſervation to every proviſo. He ſaith, he would be ſorry to have juſt cauſe to remove any. He ſaith, he will diſplace none who hath ſerved the Queen and ſtate ſincerely, *&c.* The truth is, here be two extremes; ſome few would have no change, no not reformation: ſome many would have much change, even with perturbation. God, I hope, will direct this wiſe King to hold a mean between reputation enough and no terrors*. In my particular I have many comforts and aſſurances; but in my own opinion the chief is, that the canvaſſing world is gone, and the deſerving world is come. And withal I find myſelf as one awaked out of ſleep; which I have not been this long time, nor could I think have been now without ſuch a great noiſe as this, which yet is *in aura leni*. I have written this to you in haſte, my end being no more than to write, and thereby to make you know that I will ever continue the ſame, and ſtill be ſure to wiſh you as heartily well as to myſelf. 1603.

as is ſaid, of *Parſons* the Jeſuit: and became ſo induſtrious an agent for her, that his refuſal of the oath of allegiance eſtabliſh'd by act of parliament, together with ſome imprudent carriage, gave the King ſuch offence, that he was in a manner exiled the kingdom in the year 1607. He continued roving from one country and prince's court to another till 1617, when applying himſelf with much earneſtneſs to the earl of *Buckingham*, he obtain'd a permiſſion to come into *England*, which he did in *July* that year, preſenting himſelf in the firſt place to Sir *Francis Bacon* then Lord Keeper of the great ſeal. But the King being afterwards diſpleaſed with him, did, notwithſtanding his moving and preſſing letters, command him again to depart in *October*, 1618. Yet in 1622, he was recalled to aſſiſt in the buſineſs of the *Spaniſh* match then in agitation, and knighted the year following. He is repreſented as a man of very good parts and literature, but of an active and reſtleſs temper. What opinion Sir *Francis Bacon* had of him when young, appears before in his letter to Sir *Thomas Chaloner*; and what eſteem he had for Sir *Francis*, may be ſeen in the preface to his collection of letters: at the beginning of which is printed his character of the lady *Carliſle* whom I have mentioned N° LXX. He died at *Gaunt* in *Flanders* in 1655. *Stephens.*

* Upon this occaſion it may not be amiſs to remember what cardinal *d'Oſſat* writ from *Rome* to *M. de Villeroy* upon the acceſſion of King *James* to the crown of *England*, part of which I wiſh no Prince would ever forget.

C'eſt l'ordinaire des hommes de regarder plus au ſoleil orient qu'à l'occident, & des Princes bien adviſez qui ſont appellez à un nouvel eſtat, d'y entrer doucement, ſans irriter ni mécontenter perſonne ni dedans ni dehors. Si ce Prince continüe guidé par la vertu & accompagné de bonheur, comme juſques icy, il ſera tres-grand, & fera bon l'avoir pour amy; & nous, qui depuis quelques années en ça n'avions eu l'œil quaſi qu'en un lieu, faudra que l'ayons cy-après en deux; comme faudra bien auſſi qui faſſent encore d'autres. Et en fin de compte, *Celui de tous qui regnera le mieux & le plus juſtement à l'honneur & gloire de Dieu, & au ſoulagement, profit & felicité de ſes ſujets; ſera le plus aſſeure, le plus fort, & le plus aimé, loué & beni de Dieu & des hommes; en quoy conſiſte la vraye & perdurable grandeur & puiſſance des Roys, & l'aſſeurance de leur poſterité.* Stephens.

LXXIII. To the Earl of *Northumberland.*

It may pleaſe your good Lordſhip,

I WOULD not have loſt this journey, and yet I have not that I went for: for I have had no private conference to purpoſe with the King; no more hath almoſt any other *Engliſh:* For the ſpeech his Majeſty admitteth with ſome noblemen, is rather matter of grace than matter of buſineſs. With

the attorney he ſpake, urged by the treaſurer of *Scotland*, but no more than needs muſt. After I had receiv'd his Majeſty's firſt welcome, and was promiſed private acceſs; yet not knowing what matter of ſervice your lordſhip's letter carried (for I ſaw it not) and well knowing that primeneſs in advertiſement is much; I choſe rather to deliver it to Sir *Tho. Heskins*, than to cool it in my own hands, upon expectation of acceſs. Your lordſhip ſhall find a Prince the fartheſt from vain-glory that may be; and rather like a Prince of the ancient form, than of the latter time. His ſpeech is ſwift and curſory, and in the full dialect of his country; and in ſpeech of buſineſs, ſhort; in ſpeech of diſcourſe, large. He affecteth popularity by gracing ſuch as he hath heard to be popular, and not by any faſhions of his own: He is thought ſomewhat general in his favours; and his virtue of acceſs is rather, becauſe he is much abroad and in preſs, than that he giveth eaſy audience. He haſteneth to a mixture of both kingdoms and occaſions, faſter perhaps than policy will well bear. I told your lordſhip once before, that (methought) his Majeſty rather aſked counſel of the time paſt, than of the time to come: But it is yet early to ground any ſettled opinion. For the particulars, I refer to conference, having in theſe generals gone farther in ſo tender an argument, than I would have done, were not the bearer hereof ſo aſſured. So I continue, *&c.* 1603.

LXXIV. A Letter to Mr. * *Murray*, of the King's bed-chamber.

Mr. MURRAY,

IT is very true, that his Majeſty moſt graciouſly at my humble requeſt knighted the laſt ſunday my brother in law, a towardly young gentleman; for which favour I think myſelf more bound to his Majeſty, than for the benefit of ten knights: And to tell you truly, my meaning was not that the ſuit of this other gentleman Mr. *Temple* ſhould have been moved in my name.

FOR I ſhould have been unwilling to have moved his Majeſty for more than one at once, though many times in his Majeſty's courts of juſtice, if we move once for our friends, we are allowed to move again for our fee.

BUT indeed my purpoſe was, that you might have been pleaſed to have moved it as for my ſelf.

NEVERTHELESS ſince it is ſo far gone, and that the gentleman's friends are in ſome expectation of ſucceſs, I leave it to your kind regard what is farther to be done, as willing to give ſatisfaction to thoſe which have put me in truſt, and loth on the other ſide to preſs above good manners. And ſo with my loving commendations I remain

1603. *Yours*, &c.

* Made tutor to the D. of *York*, with a yearly penſion of 300 marks, *June* 28, 1605. *Rymer* XVI. *p.* 631.

LXXV. To Mr. *Pierce*, Secretary to the Lord Deputy of *Ireland*.

Mr. PIERCE,

I AM glad to hear of you, as I do; and for my part, you ſhall find me ready to take any occaſion to further your credit and preferment. And I dare aſſure you (though I am no undertaker) to prepare your way with my lord of *Salisbury*, for any good fortune which may befall you: You teach me to complain of buſineſs, whereby I write the more briefly; and yet

yet I am ſo unjuſt, as that which I alledge for mine own excuſe, I cannot admit for yours: for I muſt, by expecting, exact your letters, with this fruit of your ſufficiency, as to underſtand how things paſs in that kingdom. And therefore having begun, I pray you continue. This is not merely curioſity, for I have ever, (I know not by what inſtinct) wiſhed well to that impoliſhed part of this crown. And ſo, with my very loving commendations, I remain.

LXXVI. To the Earl of * NORTHAMPTON, deſiring him to preſent the ADVANCEMENT of Learning to the KING.

It may pleaſe your good Lordſhip,

HAVING finiſhed a work touching the advancement of learning, and dedicated the ſame to his ſacred Majeſty, whom I dare avouch (if the records of time err not) to be the learnedſt King that hath reigned; I was deſirous, in a kind of congruity, to preſent it by the learnedſt counſellor in this kingdom; to the end that ſo good an argument, lighting upon ſo bad an author, might receive ſome reputation by the hands into which, and by which it ſhould be delivered. And therefore, I make it my humble ſuit to your lordſhip, to preſent this mean but well-meant writing to his Majeſty, and with it my humble and zealous duty; and alſo, my like humble requeſt of pardon, if I have too often taken his name in vain, not only in the dedication, but in the voucher of the authority of his ſpeeches and writings. And ſo I remain. 1605.

* The earl of *Northampton* was the ſecond ſon, and bore the name of that accompliſhed gentleman *Henry Howard* earl of *Surrey*, ſon and heir to the duke of *Norfolk*, who ſuffer'd under the ſeverity of King *Henry*'s later days; the one by death, the other by impriſonment. During great part of the reign of Queen *Elizabeth*, while his family lay under the cloud, he apply'd himſelf to learning; and to what degree he arrived, appears by a book he publiſh'd in 1583, againſt the poiſon of ſuppoſed prophecies, dedicated to Sir *Francis Walſingham*; and from the eulogy that was generally given him, that he was the moſt learned among the noble, and the moſt noble among the learned. But in the King's reign his advancement was ſpeedy both in honours and riches. The ſervices he performed as a commiſſioner in making the peace between *England* and *Spain*, gave birth to a ſaying in thoſe times, (but with what truth I know not) that his houſe in the *Strand*, now call'd *Northumberland* houſe, was built with *Spaniſh* gold. He died in 1614, leaving behind him the memory of ſome real good works, and of ſome ſuppoſed ill ones; being ſuſpected of concealing his religion for many years, and of being privy to the untimely death of Sir *Th. Overbury*. *Stephens*.

LXXVII. To Sir † THOMAS BODLEY, upon ſending his book of ADVANCEMENT of Learning.

SIR,

I THINK no man may more truly ſay with the Pſalm, *multum incola fuit anima mea*, than my ſelf; for I do confeſs ſince I was of any underſtanding, my mind hath in effect been abſent from that I have done: and in abſence are many errors, which I do willingly acknowledge; and amongſt the reſt, this great one that led the reſt; that knowing my ſelf by inward calling to be fitter to hold a book than to play a part, I have led my life in civil cauſes; for which I was not very fit by nature, and more unfit by the preoccupation of my mind. Therefore calling my ſelf home, I have now for a time enjoyed my ſelf, whereof likewiſe I deſire to make the world partaker.

† Sir *Thomas Bodley* reſtored the publick library in *Oxford*, begun in the times of K. *Henry* VI, by *Humphry* Duke of *Glouceſter*; or was rather the founder of a new one, which now bears his name, and which hath placed him among the chief benefactors to that univerſity, and to the commonwealth of learning. He died in the entrance of the year 1613. *Stephens*.

My

My labours (if I may ſo term that which was the comfort of my other labours) I have dedicated to the King; deſirous, if there be any good in them, it may be as the fat of a ſacrifice, incenſed to his honour: and the ſecond copy I have ſent unto you, not only in good affection, but in a kind of congruity, in regard of your great and rare deſert of learning. For books are the ſhrines where the ſaint is, or is believed to be: And you have built an ark to ſave learning from deluge, deſerve propriety in any new inſtrument or engine, whereby learning ſhould be improved or advanced. 1605.

LXXVIII. To the Earl of † SALISBURY, upon ſending the ADVANCEMENT of learning.

It may pleaſe your good Lordſhip,

I PRESENT your lordſhip with a work of my vacant time, which if it had been more, the work had been better. It appertaineth to your lordſhip (beſides my particular reſpects) in ſome propriety; in regard you are a great governor in a province of learning. And (that which is more) you have added to your place affection towards learning; and to your affection, judgment: Of which, the laſt I could be content were (for the time) leſs, that you might the leſs exquiſitely cenſure that which I offer unto you. But ſure I am, the argument is good, if it had lighted up a good author. But I ſhall content my ſelf to awake better ſpirits, like a bell-ringer, which is firſt up to call others to church. So with my humble deſire of your lordſhip's good acceptation, I remain. 1605.

† Sir *Robert Cecil*, created by King *James* lord *Cecil*, viſcount *Cranburne*, and earl of *Salisbury*; was not only the ſon to one of the greateſt ſtateſmen of his age, the lord *Burleigh*, but ſucceeded him in his places and abilities, and was one of the great ſupports of the Queen's declining years. Yet the ill offices he was thought to perform towards the noble and popular earl of *Eſſex*, together with his conduct in ſome particulars in her ſucceſſor's reign, abated the luſtre of his character, which otherwiſe from his parts and prudence would have appear'd very conſpicuous. After he had been long ſecretary of ſtate, ſome years lord treaſurer and chancellor of the univerſity of *Cambridge*, he died in *May* 1612, at *Marlborough*, in his return from the *Bath*; as by a diary of his ſickneſs, and the account given by Sir *Robert Naunton*, one of his retinue, appears: which I ſhould not mention, but that his enemies in their libels which flew freely about, have ſuggeſted that he died on the *Downs*; which if true, could be eſteemed at moſt but his misfortune. *Stephens.*

LXXIX. To the * Lord Treaſurer BUCKHURST, on the ſame ſubject.

May it pleaſe your Lordſhip,

I HAVE finiſhed a work touching the advancement or ſetting forward of learning, which I have dedicated to his Majeſty, the moſt learned of a

* I ſhall draw this noble lord's character from Sir *Robert Naunton*'s obſervations of the favourites of Queen *Elizabeth*; and much in his own words: My lord of *Buckhurſt* was of the noble houſe of the *Sackvilles*, and of the Queen's conſanguinity. He was a very fine gentleman of perſon and endowments both of art and nature, but without meaſure magnificent, till on the turn of his humour, and the allay that his years and good counſels of the Queen, *&c.* had wrought upon thoſe immoderate courſes of his youth, and that height of ſpirit inherent to his houſe; ſhe began to aſſiſt him in the reparation of that vaſt patrimony he had much waſted. After the honour ſhe had given him of lord *Buckhurſt*, and knight of the garter, ſhe procured him to be choſen chancellor of the univerſity of *Oxford*, upon the death of Sir *Chriſtopher Hatton*, and conſtituted him lord treaſurer on the death of the lord *Burleigh*, which office he enjoy'd till *April* 1608, dying then ſuddenly at the council-table; the King having ſome years before created him earl of *Dorſet*. He is alſo much commended for his happy vein in poetry, to which he was addicted in his youth; and for his elocution, and the excellencies of his pen, faculties that yet run in the blood, as Sir *Robert Naunton* obſerves in his ſon *Robert*, and his grandſons *Richard* and *Edward*, ſucceſſive earls of *Dorſet*; and the laſt age had the ſatisfaction to be continued in the perſon of the right honourable *Charles* earl of *Dorſet* and *Middleſex*. *Stephens.*

Sovereign, or temporal prince, that time hath known: and upon reaſon, not unlike, I humbly preſent one of the books to your lordſhip; not only as a chancellor of an univerſity, but as one that was excellently bred in all learning; which I have ever noted to ſhine in all your ſpeeches and behaviours: and therefore your lordſhip will yield a gracious aſpect to your firſt love, and take pleaſure in the adorning of that wherewith your ſelf are ſo much adorned. And ſo humbly deſiring your favourable acceptation thereof, with ſignification of humble duty, I remain. 1605.

LXXX. To the Lord Chancellor [Sir T. Egerton Lord *Elleſmere*] on the ſame ſubject.

May it pleaſe your good Lordſhip,

I Humbly preſent your lordſhip with a work, wherein as you have much commandment over the author, ſo your lordſhip hath great intereſt in the argument: for to ſpeak without flattery, few have like uſe of learning, or like judgment in learning, as I have obſerved in your lordſhip. And again, your lordſhip hath been a great planter of learning, not only in thoſe places in the church, which have been in your own gift, but alſo in your commendatory vote, no man hath more conſtantly held; *detur digniori:* and therefore, both your lordſhip is beholden to learning, and learning beholden to you; which maketh me preſume with good aſſurance that your lordſhip will accept well of theſe my labours; the rather, becauſe your lordſhip in private ſpeech hath often begun to me in expreſſing your admiration of his Majeſty's learning, to whom I have dedicated this work; and whoſe virtue and perfection in that kind did chiefly move me to a work of this nature. And ſo with ſignification of my moſt humble duty and affection to your lordſhip, I remain. 1605.

LXXXI. To Mr. Matthew.

SIR,

I Perceive you have ſome time when you can be content to think of your friends; from whom, ſince you have borrowed your ſelf, you do well (not paying the principal) to ſend the intereſt at ſix months day. The relation which here I ſend you incloſed, carries the truth of that which is publick; and tho' my little leiſure might have required a briefer, yet the matter would have endured and aſked a larger.

I Have now at laſt taught that child to go, at the ſwadling whereof you were. My work touching the proficiency and advancement of learning, I have put into two books; whereof the former, which you ſaw, I can't but account as a page to the later. I have now publiſh'd them both; whereof I though it a ſmall adventure to ſend you a copy, who have more right to it than any man, except biſhop *Andrews*, who was my inquiſitor.

The death of the late great judge concerned not me, becauſe the other was not removed. I write this in anſwer to your good wiſhes; which I return not as † flowers of *Florence*, but as you mean them; whom I conceive place can't alter no more than time ſhall me, except it be for the better. 1605.

† Mr. *Matthew* wrote an elegy on the D. of *Florence*'s felicity. See N°. CI.

LXXXII.

LXXXII. To Dr. Playfer, desiring him to translate the Advancement into *Latin.*

Mr. Dr. Playfer,

A Great desire will take a small occasion to hope and put in trial that which is desired. It pleased you a good while since to express unto me the good liking which you conceived of my book of the advancement of learning; and that more significantly (as it seemed to me) than out of courtesy or civil respect. My self, as I then took contentment in your approbation thereof, so I should esteem and acknowledge not only my contentment encreased, but my labours advanced, if I might obtain your help in that nature which I desire: Wherein, before I set down in plain terms my request unto you, I will open my self, what it was which I chiefly sought and propounded to my self in that work; that you may perceive that which I now desire, to be pursuant thereupon. If I do not much err, (for any judgment that a man maketh of his own doings, had need be spoken with a *si nunquam fallat imago)* I have this opinion, that if I had sought mine own commendation, it had been a much fitter course for me to have done as gardeners used to do, by taking their seed and slips, and rearing them first into plants, and so uttering them in pots, when they are in flower, and in their best state. But for as much as my end was merit of the state of learning (to my power) and not glory; and because my purpose was rather to excite other mens wits than to magnify mine own, I was desirous to prevent the uncertainness of mine own life and times, by uttering rather seeds than plants: nay and farther, (as the proverb is) by sowing with the basket rather than with the hand: wherefore, since I have only taken upon me to ring a bell to call other wits together, (which is the meanest office) it cannot but be consonant to my desire, to have that bell heard as far as can be. And since they are but sparks which can work but upon matter prepared, I have the more reason to wish that those sparks may fly abroad, that they may the better find and light upon those minds and spirits which are apt to be kindled. And therefore the privateness of the language considered, wherein it is written, excluding so many readers; as on the other side, the obscurity of the argument in many parts of it, excludeth many others; I must account it a second birth of that work, if it might be translated into *Latin*, without manifest loss of the sense and matter. For this purpose I could not represent to my self any man into whose hands I do more earnestly desire that work should fall than your self; for by that I have heard and read, I know no man a greater master in commanding words to serve matter. Nevertheless, I am not ignorant of the worth of your labours, whether such as your place and profession imposeth, or such as your own virtue may, upon your voluntary election, take in hand. But I can lay before you no other persuasions than either the work it self may affect you with; or the honour of his Majesty, to whom it is dedicated, or your particular inclination to my self; who, as I never took so much comfort in any labours of mine own, so I shall never acknowledge my self more obliged in any thing to the labours of another, than in that which shall assist it: Which your labour, if I can by my place, profession, means, friends, travel, work, deed, requite unto you, I shall esteem my self so straitly bound thereunto, as I shall be ever most ready both to take and seek occasion of thankfulness. So leaving it nevertheless, *salva amicitia*, as reason is, to your good liking; I remain.

Virg. Ecl. ii. 27.

LXXXIII.

LXXXIII. To the Lord Chancellor, touching the hiſtory of *Britain.*

It may pleaſe your good Lordſhip,

SOME late act of his Majeſty, referred to ſome former ſpeech which I have heard from your lordſhip, bred in me a great deſire; and the ſtrength of deſire a boldneſs to make an humble propoſition to your lordſhip, ſuch as in me can be no better than a * wiſh: but if your lordſhip ſhould apprehend it, it may take ſome good and worthy effect. The act I ſpeak of, is the order given by his Majeſty for the erection of a tomb or monument for our late Sovereign Queen *Elizabeth* †: wherein I may note much, but only this at this time, that as her Majeſty did always right to his Majeſty's hopes; ſo his Highneſs doth in all things right to her memory; a very juſt and princely retribution. But from this occaſion, by a very eaſy aſcent I paſſed farther, being put in mind by this repreſentative of her perſon, of the more true and more vive repreſentation, which is of her life and government: for as ſtatues and pictures are dumb hiſtories, ſo hiſtories are ſpeaking pictures; wherein if my affection be not too great, or my reading too ſmall, I am of this opinion, that if *Plutarch* were alive to write lives by parallels, it would trouble him both for virtue and fortune, to find for her a parallel amongſt women. And tho' ſhe was of the paſſive ſex, yet her government was ſo active, as in my ſimple opinion, it made more impreſſion upon the ſeveral ſtates of *Europe*, than it received from thence. But I confeſs unto your lordſhip I could not ſtay here, but went a little farther into the conſideration of the times which have paſſed ſince King *Henry* VIII; wherein I find the ſtrangeſt variety, that in ſo little number of ſucceſſions of any hereditary monarchy hath ever been known. The reign of a child; the offer of an uſurpation, though it were but as a diary ague; the reign of a lady married to a foreigner, and the reign of a lady ſolitary and unmarried; ſo that as it cometh to paſs in maſſy bodies, that they have certain trepidations and waverings before they fix and ſettle; ſo it ſeemeth that by the providence of God, this monarchy (before it was to ſettle in his Majeſty, and his generations, in which I hope it is now eſtabliſhed for ever) hath had theſe preluſive changes in theſe barren princes. Neither could I contain my ſelf here, (as it is eaſier for a man to multiply than to ſtay a wiſh) but calling to remembrance the unworthineſs of the hiſtory of *England* **, in the main continuance thereof; and the partiality and obliquity

* Thought, *Matth.*

† The monument here ſpoken of was erected in K. *Henry* VII's chapel at *Weſtminſter*, in the year 1606.

** The unworthineſs of the hiſtory of *England* hath been long complain'd of by ingenious men, both of this and other nations. Sir *Francis Bacon* hath expreſſed himſelf much to the ſame effect, tho' more at large in his ſecond book of the advancement of learning: where he carries this period of remarkable events ſomewhat higher than in this letter, beginning with the union of the roſes under *Henry* VII. and ending with the union of the kingdoms under K. *James*. A portion of time filled with ſo great and variable accidents both in church and ſtate, and ſince ſo well diſcovered to the view of the world, that had other parts the ſame performance, we ſhould not longer lie under any reproach of this kind. The reign of K. *Henry* VII. was written by our author ſoon after his retirement, with ſo great beauty of ſtyle, and wiſdom of obſervation, that nothing can be more entertaining; the truth of hiſtory not being diſguiſed with the falſe colours of romance. It was ſo acceptable a preſent to the P. of *Wales*, that when he became King, he commanded him to proceed with the reign of K. *Henry* VIII. But my lord *Bacon* meditating the hiſtory of nature, which he hardly lived to publiſh; his ill ſtate of health, and ſucceeding death, put an end to this and other noble deſigns: leaving the eccleſiaſtical and civil affairs of thoſe times to be related by the learned pens of Dr. *Burnet*, (notwithſtanding the objections of the avow'd enemies, and ſeeming friends to the reformation) and the lord *Herbert* of *Cherbury*; that I think there is not much of moment to be expected from a future hand. And for the annals of Queen *Elizabeth* compiled by Mr. *Camden*, the eſteem of them is as univerſal as the language in which they are written. Nor muſt I forget in this place to take notice of two fair and large volumes lately publiſhed in *French* by Monſieur *de Larrey*; where building upon the foundations laid by theſe gentlemen, and ſome other memoirs, he hath not forgotten to do much honour to the *Engliſh* nation: beginning his hiſtory alſo with *Henry* VII. *Stephens.*

of

of that of *Scotland*, in the lateſt and largeſt author † that I have ſeen; I conceived it would be honour for his Majeſty, and a work very memorable; if this iſland of *Great Britain*, as it is now joined in monarchy for the ages to come, ſo it were joined in hiſtory for the times paſt; and that one juſt and compleat hiſtory were compiled of both nations. And if any man perhaps ſhould think it may refreſh the memory of former diſcords, he may ſatisfy himſelf with the verſe, *olim haec meminiſſe juvabit*; for the caſe being now altered, it is matter of comfort and gratulation to remember former troubles. Thus much, if it may pleaſe your lordſhip, is in the optative mood; and it is time that I did look a little into the potential; wherein the hope which I conceived was grounded upon three obſervations. The firſt, the nature of theſe times, which flouriſh in learning, both of art and language; which giveth hope not only that it may be done, but that it may be well done. Secondly, I do ſee that which all the world ſees in his Majeſty, both a wonderful judgment in learning, and a ſingular affection towards learning; and works which are of the mind more than of the hand. For there cannot be the like honour ſought and found, in building of galleries *, and planting of elms along high-ways, and in thoſe outward ornaments, wherein *France* is now ſo buſy; (things rather of magnificence than of magnanimity;) as there is in the uniting of ſtates ‡, pacifying of controverſies **, nouriſhing and augmenting of learning and arts, and the particular actions appertaining to theſe; of which kind *Cicero* judged truly, when he ſaid to *Caeſar*, *quantum operibus tuis detrahet vetuſtas, tantum addet laudibus.* And laſtly, I call to mind, that your lordſhip at ſome times hath been pleaſed to expreſs unto me a great deſire, that ſomething of this nature ſhould be performed; anſwerable indeed to your other noble and worthy courſes and actions; joining and adding unto the great ſervices towards his Majeſty, (which have, in ſmall compaſs of time, been performed by your lordſhip) other great deſervings both of the church and commonwealth, and particular men; ſo as the opinion of ſo great and wiſe a man, doth ſeem to me a good warrant both of the poſſibility and worth of this matter. But all this while I aſſure my ſelf, I cannot be ſo far miſtaken by your lordſhip, as if I ſought an office or employment for my ſelf: for no man knows better than your lordſhip, that if there were in me any faculty thereunto, yet neither my courſe of life, nor profeſſion would permit it: but becauſe there be ſo many || good painters both for hand and colours, it needeth but encouragement and inſtructions to give life unto it; ſo in all humbleneſs I conclude, my preſenting unto your lordſhip this wiſh; which, if it periſh, it is but a loſs of that which is not: And ſo craving pardon that I have taken ſo much time from your lordſhip, I remain.

|| Great Maſters, *Mar.*

† This I take to be meant of *Buchanan*'s hiſtory of *Scotland*; a book much admired by ſome, tho' cenſured by many, for his partiality in favour of the lords, againſt *Mary* Queen of the *Scots*, and the regal power. In other reſpects, Archbiſhop *Spotſwood* informs us that he penned it with ſuch judgment and eloquence, as no country can ſhew a better. *Stephens.*

* The magnificent gallery at the *Louvre* in *Paris*, built by *Henry* IV.

‡ The union of *England* and *Scotland.*

** The conference at *Hampton-court* held between the biſhops and puritans, as they were then called, ſoon after the King's coming to the crown of *England*, and where his Majeſty was the moderator. *Stephens.*

LXXXIV. To the KING, touching the hiſtory of his times.

It may pleaſe your Majeſty,

HEARING that your Majeſty is at leiſure to peruſe ſtory, a deſire took me to make an experiment what I could do in your Majeſty's times, which being but a * leaf or two, I pray your pardon, if I ſend it for your recreation;

* See Vol. III. p. 509.

recreation; conſidering that love muſt creep where it cannot go. But to this I add theſe petitions. Firſt, that if your Majeſty do diſlike any thing, you would conceive I can amend it upon your leaſt beck. Next, that if I have not ſpoken of your Majeſty encomiaſtically, your Majeſty would be pleaſed only to aſcribe it to the law of an hiſtory; which doth not clutter together praiſes upon the firſt mention of a name, but rather diſperſeth and weaveth them through the whole narrative. And as for the proper place of commemoration, (which is in the period of life) I pray God I may never live to write it. Thirdly, that the reaſon why I preſumed to think of this oblation, was becauſe whatſoever my diſability be, yet I ſhall have that advantage which almoſt no writer of hiſtory hath had; in that I ſhall write of times not only ſince I could remember, but ſince I could obſerve. And laſtly, that it is only for your Majeſty's reading.

LXXXV. A letter of expoſtulation to Sir EDWARD COKE, Attorney-General.

Mr. ATTORNEY,

I THOUGHT beſt, once for all, to let you know in plainneſs what I find of you, and what you ſhall find of me. You take to your ſelf a liberty to diſgrace and diſable my law, my experience, my diſcretion; what it pleaſeth you I pray think of me: I am one that knows both mine own wants and other mens; and it may be, perchance, that mine mend, when others ſtand at a ſtay. And ſurely I may not endure, in publick place, to be wronged without repelling the ſame to my beſt advantage to right my ſelf. You are great, and therefore have the more enviers, which would be glad to have you paid at another's coſt. Since the time I miſſed the ſollicitor's place, (the rather I think by your means) I cannot expect that you and I ſhall ever ſerve as attorney and ſollicitor together; but either to ſerve with another upon your remove, or to ſtep into ſome other courſe: ſo as I am more free than ever I was from any occaſion of unworthy conforming my ſelf to you, more than general good manners, or your particular good uſage ſhall provoke; and if you had not been ſhort-ſighted in your own fortune, (as I think) you might have had more uſe of me. But that tide is paſſed. I write not this to ſhew my friends what a brave letter I have written to Mr. Attorney; I have none of thoſe humours: but that I have written is to a good end; that is, to the more decent carriage of my maſter's ſervice, and to our particular better underſtanding one of another. This letter, if it ſhall be anſwered by you in deed, and not in word, I ſuppoſe it will not be worſe for us both; elſe it is but a few lines loſt, which for a much ſmaller matter I would have adventured. So this being to your ſelf, I for my part reſt.

LXXXVI. To the Earl of SALISBURY, concerning the Sollicitor's place.

It may pleaſe your Lordſhip,

I AM not privy to my ſelf of any ſuch ill deſerving towards your lordſhip, as that I ſhould think it an impudent thing to be a ſuitor for your favour in a reaſonable matter; your lordſhip being to me as (with your good favour)

you cannot ceaſe to be: but rather it were a ſimple and arrogant part in me to forbear it.

It is thought Mr. Attorney ſhall be Chief Juſtice of the common pleas; in caſe Mr. Sollicitor riſe, I would be glad now at laſt to be Sollicitor; chiefly becauſe I think it will increaſe my practice, wherein God bleſſing me a few years, I may mend my ſtate, and ſo after fall to my ſtudies and eaſe; whereof one is requiſite for my body, and the other ſerveth for my mind: wherein if I ſhall find your lordſhip's favour, I ſhall be more happy than I have been, which may make me alſo more wiſe. I have ſmall ſtore of means about the King, and to ſue my ſelf is not fit; and therefore I ſhall leave it to God, his Majeſty, and your lordſhip, for I muſt ſtill be next the door. I thank God in theſe tranſitory things I am well reſolved. So beſeeching your lordſhip not to think this letter the leſs humble, becauſe it is plain, I reſt, *&c.*

Fr. Bacon.

LXXXVII. Another letter to the Earl of Salisbury, touching the Sollicitor's place.

It may pleaſe your good Lordſhip,

I Am not ignorant how mean a thing I ſtand for, in deſiring to come into the ſollicitor's place: for I know well, it is not the thing it hath been; time having wrought alteration both in the profeſſion, and in that ſpecial place. Yet becauſe, I think, it will encreaſe my practice, and that it may ſatisfy my friends; and becauſe I have been voiced to it, I would be glad it were done. Wherein I may ſay to your lordſhip, in the confidence of your poor kinſman, and of a man by you advanced; *Tu idem fer opem, qui ſpem dediſti:* for, I am ſure, it was not poſſible for a man living to have received from another, more ſignificant and comfortable words of hope; your lordſhip being pleaſed to tell me, during the courſe of my laſt ſervice, that you would raiſe me; and that, when you had reſolved to raiſe a man, you were more careful of him than himſelf; and that what you had done for me in my marriage, was a benefit to me, but of no uſe to your lordſhip; and therefore, I might aſſure my ſelf, you would not leave me there; with many like ſpeeches, which I know my duty too well, to take any other hold of than the hold of a thankful remembrance. And I acknowledge, and all the world knoweth, that your lordſhip is no dealer of holy water, but noble and real; and, on my part, I am of a ſure ground, that I have committed nothing that may deſerve alteration. And therefore my hope is, your lordſhip will finiſh a good work, and conſider, that time groweth precious with me, and that I am now *in vergentibus annis.* And although I know that your fortune is not to need an hundred ſuch as I am, yet I ſhall be ever ready to give you my firſt and beſt fruits; and to ſupply (as much as in me lieth,) worthineſs, by thankfulneſs.

LXXXVIII. To

LXXXVIII. To the Lord CHANCELLOR, concerning the Sollicitor's place.

It may pleaſe your good Lordſhip,

AS I conceived it to be a reſolution, both with his Majeſty, and among your lordſhips of his council, that I ſhould be placed ſollicitor, and the ſollicitor to be removed to be the King's ſerjeant: ſo I moſt thankfully acknowledge your lordſhip's furtherance and forwardneſs therein; your lordſhip being the man that firſt deviſed the mean: Whereof my humble requeſt to your lordſhip is, that you would ſet in with ſome ſtrength to finiſh this your work; which I aſſure your lordſhip I deſire the rather, becauſe being placed, I hope, for many favours, at laſt to be able to do you ſome better ſervice. For as I am, your lordſhip cannot uſe me; nor ſcarcely indeed know me: Not that I vainly think, I ſhall be able to do any great matters, but certainly it will frame me to uſe a more induſtrious obſervance and application to ſuch, as I honour ſo much as I do your lordſhip; and not (I hope) without ſome good offices, which may now and then deſerve your thanks. And herewithal (good my lord) I humbly pray your lordſhip to conſider, that time groweth precious with me, and that a married man is ſeven years elder in his thoughts the firſt day: And therefore what a diſcomfortable thing is it for me to be unſettled ſtill? Certainly, were it not that I think my ſelf born do my Sovereign ſervice, and therefore in that ſtation I will live and die; otherwiſe, for mine own private comfort, it were better for me that the King ſhould blot me out of his book; or that I ſhou'd turn my courſe to endeavour to ſerve in ſome other kind, than for me to ſtand thus at a ſtop; and to have that little reputation, which by my induſtry I gather, to be ſcatter'd and taken away by continual diſgraces, every new man coming above me. Sure I am, I ſhall never have fairer promiſes and words from all your lordſhips. For I know not what my ſervices are, (ſaving that your lordſhips told me they were good;) and I would believe you in a much greater matter. Were it nothing elſe, I hope the modeſty of my ſuit deſerveth ſomewhat; for I know well, the ſollicitor's place is not as your lordſhip left it; time working alteration, ſomewhat in the profeſſion, much more in that ſpecial place. And were it not to ſatisfy my wife's friends, and to get my ſelf out of being a common gaze and a ſpeech, I proteſt before God I would never ſpeak word for it. But to conclude, as my honourable lady, your wife, was ſome mean to make me to change the name of another; ſo if it pleaſe you to help me to change mine own name, I can be but more and more bounden to you: And I am much deceived, if your lordſhip find not the King well inclined, and my lord of *Salisbury* forward and affectionate.

LXXXIX. To my Lady PACKINGTON, in anſwer to a meſſage by her ſent.

MADAM,

YOU ſhall with right good will be made acquainted with any thing that concerneth your daughters, if you bear a mind of love and concord; otherwiſe you muſt be content to be a ſtranger unto us: For I may not be ſo unwiſe as to ſuffer you to be an author or occaſion of diſſenſion between your daughters and their huſbands, having ſeen ſo much of that kind in your ſelf.

AND

And above all things I will turn back your kindneſs, in which you ſay, you will receive my wife if ſhe be caſt off: for it is much more likely we have occaſion to receive you being caſt off, if you remember what is paſſed. But it is time to make an end of theſe follies: and you ſhall at this time pardon me this one fault of writing to you; for I mean to do it no more till you uſe me and reſpect me as you ought. So wiſhing you better than it ſeemeth you will draw upon yourſelf, I reſt

Yours.

XC. To the King, touching the Sollicitor's place.

HOW honeſtly ready I have been (moſt gracious Sovereign) to do your Majeſty humble ſervice, to the beſt of my power, and in a manner beyond my power (as I now ſtand,) I am not ſo unfortunate but your Majeſty knoweth. For both in the commiſſion of union, (the labour whereof, for men of my profeſſion, reſted moſt upon my hand;) and this laſt parliament, in the bill of the ſubſidy, both body and preamble; in the bill of attainders, both *Treſham* and the reſt; in the matter of purveyance; in the eccleſiaſtical petitions; in the grievances; and the like; as I was ever careful (and not without good ſucceſs) ſometimes to put forward that which was good, ſometimes to keep back that which was not ſo good; ſo your Majeſty was pleaſed kindly to accept of my ſervices, and to ſay to me, ſuch conflicts were the wars of peace, and ſuch victories the victories of peace; and therefore ſuch ſervants that obtained them were by Kings, that reign in peace, no leſs to be eſteemed, than ſervices of commanders in the wars. In all which nevertheleſs I can challenge to myſelf no ſufficiency, but that I was diligent and reaſonably happy to execute thoſe directions, which I received either immediately from your royal mouth, or from my lord of *Salisbury*: at which time it pleaſed your Majeſty alſo to promiſe and aſſure me, that upon the remove of the then attorney, I ſhou'd not be forgotten, but brought into ordinary place. And this was after confirmed to me, by many of my lords, and towards the end of the laſt term, the manner alſo in particular was ſpoken of; that is, that Mr. Sollicitor ſhou'd be made your Majeſty's Serjeant, and I Sollicitor; for ſo it was thought beſt to ſort with both our gifts and faculties for the good of your ſervice: and of this reſolution both court and country took knowledge. Neither was this any invention or project of mine own; but moved from my lords, and I think, firſt from my lord Chancellor; whereupon reſting, your Majeſty well knoweth I never opened my mouth for the greater place; though I am ſure I had two circumſtances, that Mr. Attorney, that now is, could not alledge: the one, nine years ſervice of the crown; the other, the being couſin germain to the lord of *Saliſbury*, whom your Majeſty eſteemeth and truſteth ſo much. But for the leſs place, I conceived it was meant me. But after that Mr. Attorney *Hobart* was placed, I heard no more of my preferment; but it ſeemed to be at a ſtop, to my great diſgrace and diſcouragement. For, gracious Sovereign, if ſtill, when the waters are ſtirr'd, another ſhall be put in before me, your Majeſty had need work a miracle, or elſe I ſhall be ſtill a lame man to do your Majeſty ſervice. And therefore my moſt humble ſuit to your Majeſty, is; this, which ſeemed to me intended, may ſpeedily be performed: And, I hope, my former ſervice ſhall be but as beginnings to better, when I am better ſtrengthened: For ſure I am, no man's heart is fuller (I ſay not but

many may have greater hearts, but I ſay not fuller) of love and duty towards your Majeſty and your children; as, I hope, time will manifeſt againſt envy and detraction, if any be. To conclude, I moſt humbly crave pardon for my boldneſs and reſt.

XCI. To the Earl of SALISBURY upon a New-year's-tide.

It may pleaſe your good Lordſhip,

HAVING no gift to preſent you with in any degree proportionable to my mind, I deſire nevertheleſs to take the advantage of a ceremony to expreſs myſelf to your lordſhip; it being the firſt time I could make the like acknowledgment, when I ſtood out of the perſon of a ſuitor: wherefore I moſt humbly pray your lordſhip to think of me, that now it hath pleaſed you, by many effectual and great benefits, to add the aſſurance and comfort of your love and favour to that precedent diſpoſition, which was in me, to admire your virtue and merit; I do eſteem whatſoever I have or may have in this world, but as traſh, in compariſon of having the honour and happineſs to be a near and well accepted kinſman to ſo rare and worthy a counſellor, governour and patriot: For having been a ſtudious, if not a curious obſerver of antiquities of virtue as of late pieces; I forbear to ſay to your lordſhip what I find and conceive; but to any other I would think to make myſelf believed. But not to be tedious in that which may have the ſhew of a complement, I can but wiſh your lordſhip many happy years, many more than your father had; even ſo many more, as we may need you more. So I remain.

XCII. To Mr. MATTHEW, impriſon'd for religion.

Mr. MATTHEW,

DO not think me forgetful or altered towards you; but if I ſhould ſay, I could do you any good, I ſhould make my power more than it is. I do hear that which I am right ſorry for; that you grow more impatient and buſy than at firſt; which maketh me exceedingly fear the iſſue of that which ſeemeth not to ſtand at a ſtay. I my ſelf am out of doubt, that you have been miſerably abuſed, when you were firſt ſeduced; but that which I take in compaſſion, others may take in ſeverity. I pray God, that underſtandeth us all better than we underſtand one another, contain you (even as I hope he will) at the leaſt, within the bounds of loyalty to his Majeſty, and natural piety towards your country. And I intreat you much, ſometimes to meditate upon the extreme effects of ſuperſtition in this laſt powder-treaſon; fit to be tabled and pictured in the chambers of meditation, as another hell above the ground; and well juſtifying the cenſure of the heathen, that ſuperſtition is far worſe than atheiſm: by how much it is leſs evil to have no opinion of God at all, than ſuch as is impious towards his divine Majeſty and goodneſs *. Good Mr. *Matthew*, receive yourſelf back from theſe courſes of perdition: Willing to have written a great deal more, I continue, *&c.*

* See Eſſays, Vol. III. p. 325.

XCIII. To Mr. MATTHEW.

SIR,

TWO letters of mine are now already walking towards you; but ſo that we might meet, it were no matter though our letters ſhou'd loſe their way. I make a ſhift in the mean time to be glad of your approaches, and would be more glad to be an agent for your preſence, who have been a patient by your abſence. If your body by indiſpoſition make you acknowledge the healthful air of your native country; much more do I aſſure my ſelf, that you continue to have your mind no way eſtranged. And as my truſt with the ſtate is above ſuſpicion, ſo my knowledge both of your loyalty and honeſt nature will ever make me ſhew myſelf your faithful friend without ſcruple: You have reaſon to commend that gentleman to me, by whom you ſent your laſt, although his having travelled ſo long amongſt the ſadder nations of the world make him much the leſs eaſy upon ſmall acquaintance to be underſtood. I have ſent you ſome copies of my book of the *Advancement*, which you deſired; and a little work of my recreation, which you deſired not: My *Inſtauration* I reſerve for our conference, it ſleeps not. Thoſe works of the *Alphabet* are in my opinion of leſs uſe to you where you are now, than at *Paris*; and therefore I conceived, that you had ſent me a kind of tacit countermand of your former requeſt. But in regard that ſome friends of yours have ſtill inſiſted here, I ſend them to you; and for my part, I value your own reading more than your publiſhing them to others. Thus in extreme haſte, I have ſcribbled to you I know not what, which therefore is the leſs affected, and for that very reaſon will not be eſteemed the leſs by you.

XCIV. To Sir GEORGE * CAREW, on ſending him the treatiſe, *in felicem memoriam Elizabethae.*

BEING aſked a queſtion by this bearer, an old ſervant of my brother *Anthony Bacon*'s, whether I would command him any thing into *France*; and being at better leiſure than I would, in regard of ſickneſs; I began to remember that neither your buſineſs nor mine (though great and continual) can be, upon an exact account, any juſt occaſion, why ſo much good-will as hath paſſed between us ſhould be ſo much diſcontinued as it hath been. And therefore, becauſe one muſt begin, I thought to provoke your remembrance of me by a letter: And thinking to fit it with ſomewhat beſides ſalutations, it came to my mind, that this laſt ſummer vacation, by occaſion of a factious book that endeavoured to verify, *Miſera Foemina*, (the addition of the *Pope's Bull*) upon Queen *Elizabeth*, I did write a few lines in her *Memorial* †, which I thought you would be pleaſed to read, both for the argument, and becauſe you were wont to bear affection to my pen. *Verum, ut aliud ex alio*, if it came handſomely to paſs, I would be glad the

† See Vol II. p. 389. of this edition.

* Sir *George Carew* of *Cornwal* was maſter in *Chancery* in the time of Queen *Elizabeth*; and in 1597 ſent ambaſſador into *Poland*; and in 1606 went unto the court of *France* with the like character. After about three years continuance, he was recalled by the King to make uſe of his ſervices at home; but he ſurviv'd not many years. M. *de Thou*, in a letter to Mr. *Camden* in 1613, very much laments his death; as loſing a friendſhip he much valued, and an aſſiſtant in the proſecution of his hiſtory: having receiv'd helps from him in that part which relates to the diſſenſions between the *Poles* and the *Swedes* in the year 1598, as appears before the contents of Book CXXI. *Stephens.*

Preſident

Preſident de Thou (who hath written an hiſtory, as you know, of that fame and diligence) ſaw it; chiefly becauſe I know not whether it may not ſerve him for ſome uſe in his ſtory; wherein I wou'd be glad he did right to the truth, and to the memory of that lady, as I perceive by that he hath already written he is well inclined to do. I would be glad alſo, it were ſome occaſion (ſuch as abſence may permit) of ſome acquaintance or mutual notice between us. For though he hath many ways the precedence (chiefly in worth) yet this is common to us both, that we ſerve our Sovereigns in places of law eminent: And not ourſelves only, but that our fathers did ſo before us. And laſtly, that both of us love learning and liberal ſciences, which was ever a bond of friendſhip in the greateſt diſtance of places. But of this I make no farther requeſt, than your own occaſions and reſpects (to me unknown) may further or limit; my principal purpoſe being to ſalute you, and to ſend you this token: Whereunto I will add my very kind commendations to my lady; and ſo commit you both to God's holy protection.

XCV. To the KING, upon preſenting the diſcourſe touching the plantation of *Ireland*.

It may pleaſe your excellent Majeſty,

I KNOW not better how to expreſs my good wiſhes of a new-year to your Majeſty, than by this little book, which in all humbleneſs I ſend you. The ſtyle is a ſtyle of buſineſs rather than curious or elaborate. And herein I was encouraged by my experience of your Majeſty's former grace, in accepting of the like poor field-fruits touching the union. And certainly I reckon this action as a ſecond brother to the union. For I aſſure myſelf that *England*, *Scotland* and *Ireland* well united, is ſuch a trefoil as no Prince except yourſelf (who are the worthieſt) weareth in his crown; *Si potentia reducatur in actum*. I know well, that for me to beat my brains about theſe things, they be *Majora quam pro fortuna*; but yet they may be *minora quam pro ſtudio ac voluntate*. For as I do yet bear an extreme zeal to the memory of my old miſtreſs Queen *Elizabeth*; to whom I was rather bound for her truſt than her favour; ſo I muſt acknowledge myſelf more bound to your Majeſty both for truſt and favour; whereof I will never deceive the one, as I can never deſerve the other. And ſo in all humbleneſs kiſſing your Majeſty's ſacred hand, I remain.

XCVI. To the Biſhop of ELY, upon ſending his writing, entitled, *Cogitata & Viſa*.

My very good Lord,

NOW your lordſhip hath been ſo long in the church and the palace, diſputing between Kings and Popes*; methinks you ſhould take pleaſure to look into the field, and refreſh your mind, with ſome matter of philoſophy;

* The King and kingdom being exaſperated by the gun-powder treaſon, thought it neceſſary to make ſome more effectual laws to diſtinguiſh between thoſe papiſts that paid due obedience to the King, and thoſe that did not. For which end, in the parliament which met upon the memorable fifth of *November* 1605, a new oath of allegiance was framed; declaring that the Pope, *&c.* had no power to depoſe Kings, abſolve their ſubjects, or diſpoſe of their kingdoms, *&c.* The court of *Rome*, jealous of loſing an authority, they had been many years aſſuming, and eſpecially perceiving that many papiſts ſubmitted

philoſophy; tho' that ſcience be now thro' age waxed a child again, and left to boys and young men. And becauſe you were wont to make me believe you took liking to my writings, I ſend you ſome of this vacation's fruits; and thus much more of my mind and purpoſe. I haſten not to publiſh, periſhing I would prevent; and I am forced to reſpect as well my times as the matter. For with me it is thus; and, I think, with all men in my caſe: If I bind myſelf to an argument, it loadeth my mind; but if I rid my mind of the preſent cogitation, it is rather a recreation. This hath put me into theſe miſcellanies; which I purpoſe to ſuppreſs, if God give me leave, to write a juſt and perfect volume of philoſophy, which I go on with, tho' ſlowly. I ſend not your lordſhip too much, leſt it may glut you. Now let me tell you what my deſire is: if your lordſhip be ſo good now, as when you were the good dean of *Weſtminſter*, my requeſt to you is; that not by pricks, but by notes, you wou'd mark unto me whatſoever ſhall ſeem unto you either not current in the ſtyle, or harſh to credit and opinion, or inconvenient for the perſon of the writer; for no man can be judge and party: and when our minds judge by reflexion on our ſelves, they are more ſubject to error. And tho', for the matter itſelf, my judgment be in ſome things fixed, and not acceſſible by any man's judgment that goeth not my way; yet even in thoſe things, the admonition of a friend may make me expreſs myſelf diverſly. I would have come to your lordſhip, but that I am haſtening to my houſe in the country: and ſo I commend your lordſhip to God's goodneſs.

ſubmitted to the oath, as not intrenching upon matters of faith, ſeverely inhibited them from taking the ſame by two briefs, the one quickly ſucceeding the other. The King on the other hand eſteeming it a point that nearly concerned him, had recourſe to thoſe arms he could beſt manage, encounter'd the briefs by a premonition directed to all Chriſtian Princes; exhorting them to eſpouſe the common quarrel. Cardinal *Bellarmine*, who, by virtue of his title, thought himſelf almoſt equal to Princes, and by his great learning much ſuperiour, enters the liſts with the King. The ſeconds coming in on both ſides, no man was thought fitter to engage this remarkable antagoniſt than that great and renowned prelate in learning and ſanctity Dr. *Andrews*, then biſhop of *Ely*, and after of *Winchester*. Neither were the reformed of the *French* church idle ſpectators; as *Monſieur du Moulin*, and *Monſieur du Pleſſis Mornay*: This laſt publiſh'd a book at *Saumur* in 1611, entitled, *The Myſtery of Iniquity*, &c. ſhewing by what degrees the biſhops of *Rome* had raiſed themſelves to their preſent grandeur, aſſerting the right of ſovereign princes againſt the poſitions of the cardinals *Bellarmine* and *Baronius*: The *French* edition whereof he dedicated to *Lewis* the thirteenth, and the *Latin* to King *James*. This laſt performance was preſented to King *James*, with a letter exhorting him, *de quitter d'oreſenavant la plume, pour aller eſpée à la main deſnicher l'Antichriſt hors de ſa forteresſe*: To give over waging a war with his pen, and to deſtroy the papal power with his ſword; which he excites the King to attempt in the concluſion of his dedication, with ſo much life, that I ſhall crave the liberty to inſert part of his own words, in order to declare the ſpirit and zeal of the gentleman, who for his valour and conduct in war, his judgment in counſel, his dexterity in diſpatches; and his firmneſs and conſtancy in religion; in the defence of which, hand, and tongue, and pen were employ'd, is far above all the titles of honour that can be given.

Hanc tu, Rex potentiſſime, laudem, hanc lauream, abſit ut tibi praeripi patiaris; cuiquam alii ſervatam velis; non ſanguine, non vita, non carioribus caeteris redemptam malis. At tu Jehova Deus, *cujus res, cujus gloria hic proprie agitur; cujus abſque ope fruſtra ſint vota, ſuſpiria, molimina noſtra; evigila, exſurge, robur indue, juſtitiam ut loricam. Voca ſervum tuum per nomen ſuum, prehende dexteram Unctì tui, ambula ante faciem ejus; complanentur valles, ſubſidant montes; conſternantur fluvii, pateant januae, conterantur vectes, contremiſcant populi, corruat Jericho illa in ſpiritu oris tui, in conſpectu ejus. Ego ſexagenario licet jam major, lateri tunc ipſius haeream indivulſus; inter anguſta, inter aſpera* Alpium *ſenectam exuam; inter principia proelium miſceam; inter triumphos praecinente angelo* cecidit *illud congeminem; ſanctae huic laetitiae totus immergar, aeternae contiguus immoriar raptus.*

But this was an enterpriſe ſuited to the warlike genius of *Du Pleſſis*, great maſter of *Henry* the fourth, and not to the peaceable ſpirit of King *James*. Beſides the King, in his anſwer of the 20th of *October* 1611, (after he had excuſed his long ſilence, and very much commended this author in the deſign of his book, and as freely called the Pope Antichriſt, and *Rome Babylon*) conceives that neither the ſcriptures, the doctrine or example of the primitive church, would ſufficiently juſtify an offenſive war, undertaken purely for religion; could he in prudence expect any ſucceſs in ſuch an attempt.

XCVII. To Sir THO. BODELEY, after he had imparted to him a writing, entitled, *Cogitata & Viſa.*

SIR,

IN reſpect of my going down to my houſe in the countrey, I ſhall have miſs of my papers, which I pray you therefore to return unto me. You are, I bear you witneſs, ſlothful, and you help me nothing; ſo as I am half in conceit, that you affect not the argument: for my ſelf, I know well you love and affect. I can ſay no more to you, but *Non canimus ſurdis, reſpondent omnia ſylvae.* If you be not at the lodgings chalk'd up, (whereof I ſpeak in my preface,) I am but to paſs by your door. But if I had you a fortnight at *Gorhambury*, I would make you tell me another tale; or elſe I would add a cogitation againſt libraries, and be revenged on you that way. I pray you ſend me ſome good news of Sir *Tho. Smith:* and commend me very kindly to him. So I reſt.

XCVIII. Sir THOMAS BODELEY's letter to Sir FRANCIS BACON, about his *Cogitata & Viſa*, wherein he declareth his opinion freely touching the ſame.

SIR,

AS ſoon as the term was ended, ſuppoſing your leiſure was more than before, I was coming to thank you two or three times, rather chuſing to do it by word than by letter: but I was ſtill diſappointed of my purpoſe, as I am at this preſent upon an urgent occaſion, which doth tie me faſt to *Fulham*, and hath now made me determine to impart my mind in writing.

I think you know I have read your *Cogitata & Viſa*, which I proteſt I have done with great deſire, reputing it a token of your ſingular love, that you joined me with thoſe your chiefeſt friends, to whom you would commend the firſt peruſal of your draught: for which, I pray you, give me leave to ſay but this unto you.

FIRST, that if the depth of my affection to your perſon and ſpirit, to your works and your words, and to all your abilities, were as highly to be valued, as your affection is to me, it might walk with yours arm in arm, and claim your love by juſt deſert. But there can be no compariſon where our ſtates are ſo uneven, and our means to demonſtrate our affections ſo different; inſomuch as for my own, I muſt leave it to be prized in the nature that it is, and you ſhall evermore find it moſt addicted to your worth.

As touching the ſubject of your book, you have ſet a-foot ſo many rare and noble ſpeculations, as I cannot chuſe but wonder (and I ſhall wonder at it ever) that your expence of time conſidered in your publick profeſſion, which hath in a manner no acquaintance with ſcholarſhip of learning, you ſhould have culled out the quinteſſence, and ſucked up the ſap of the chiefeſt kind of learning.

FOR howſoever, in ſome points you do vary altogether from that which is, and hath been ever the received doctrine of our ſchools, and was always by the wiſeſt, as ſtill they have been deemed, of all nations and ages adjudged the trueſt; yet it is apparent, that in thoſe very points, and in all your propoſals and plots in that book, you ſhew your ſelf a maſter workman.

For my ſelf, I muſt confeſs, and I ſpeak it *ingenuè*, that for the matter of learning, I am not worthy to be reckoned in the number of ſmatterers.

And yet becauſe it may ſeem, that being willing to communicate your treatiſe with your friends, you are likewiſe willing to liſten to whatſoever I or others can except againſt it; I muſt deliver unto you for my private opinion, that I am one of that crew that ſay there is, and we profeſs a far greater holdfaſt of certainty in your ſciences, than you by your diſcourſe will ſeem to acknowledge.

For whereas, firſt you do object the ill ſucceſs and errors of practitioners in phyſick, you know as well they do proceed of the patient's unrulineſs; for not one of a hundred doth obey his phyſician in obſerving his cautels: or by miſinformation of their own indiſpoſitions, for few are able in this kind to explicate themſelves, or by reaſon their diſeaſes are by nature incurable, which is incident you know to many ſorts of maladies, or for ſome other hidden cauſe which cannot be diſcovered by courſe of conjecture. Howbeit, I am full of this belief, that as phyſick is miniſtred now-a-days by phyſicians, it is much to be aſcribed to their negligence or ignorance, or other touch of imperfection, that they ſpeed no better in their practice: for few are found of that profeſſion ſo well inſtructed in their art, as they might by the precepts which their art doth afford; which though it be defective in regard of ſuch perfection, yet for certain it doth flouriſh with admirable remedies, ſuch as tract of time hath taught by experimental events, and are the open highway to that principal knowledge that you recommend.

As for alchymy and magick, ſome concluſions they have that are worthy the preſerving; but all their ſkill is ſo accompanied with ſubtleties and guiles, as both the crafts and craft-maſters are not only deſpiſed, but named with deriſion; whereupon to make good your principal aſſertion, methinks you ſhould have drawn your examples from that which is taught in the liberal ſciences, not by picking out caſes that happen very ſeldom, and may by all confeſſion be ſubject to reproof, but by controlling the generals, and grounds, and eminent poſitions, and aphoriſms, which the greateſt artiſts and philoſophers have from time to time defended.

For it goeth for current amongſt all men of learning, that thoſe kind of arts which clerks in times paſt did term *quadrivials*, confirm their propoſitions by infallible demonſtrations.

And likewiſe in the *trivials* ſuch leſſons and directions are delivered unto us, as will effect very near, or as much altogether, as every faculty doth promiſe. Now in caſe we ſhould concur, to do as you adviſe, which is to renounce our common notions, and cancel all our theorems, axioms, rules, and tenets, and ſo to come babes *ad regnum naturae*, as we are willed by ſcriptures to come *ad regnum coelorum*; there is nothing more certain in my underſtanding, than that it would inſtantly bring us to barbariſm, and after many thouſand years, leave us more unprovided of theorical furniture than we are at this preſent; for that were indeed to become very babes, or *tabula raſa*, when we ſhall leave no impreſſion of any former principles, but be driven to begin the world again, and to travel by trials of axioms and ſenſe (which are your proofs by particulars) what to place *in intellectu*, for our general conceptions, it being a maxim of all mens approving, *in intellectu nihil eſſe quod non prius fuit in ſenſu*; and ſo in appearance it would befall us, that till *Plato*'s year be come about, our inſight in learning would be of leſs reckoning than now it is accounted.

As

As for that which you inculcate, of a knowledge more excellent than now is among us, which experience might produce, if we would but eſſay to extract it out of nature by particular probations, it is no more upon the matter, but to incite us unto that, which without inſtigation by a natural inſtinct men will practiſe of themſelves; for it cannot in reaſon be otherwiſe thought, but that there are infinite numbers in all parts of the world, (for we may not in this caſe confine our cogitations within the bounds of *Europe*,) which embrace the courſe that you purpoſe, with all the diligence and care that ability can perform; for every man is born with an appetite of knowledge, wherewith he cannot be ſo glutted, but ſtill, as in a dropſy, thirſt after more.

But yet why they ſhould hearken to any ſuch perſuaſion, as wholly to aboliſh thoſe ſettled opinions and general theorems, to which they attained by their own and their anceſtors experience, I ſee nothing yet alledged to induce me to think it.

Moreover I may ſpeak, as I ſhould ſuppoſe with good probability, that if we ſhould make a mental ſurvey what is like to be effected all the world over, thoſe five or ſix inventions which you have ſelected, and imagine to be but of modern ſtanding, would make but a ſlender ſhew amongſt ſo many hundreds of all kinds of natures, which are daily brought to light by the enforcement of wit, or caſual events, and may be compared, or partly preferred above thoſe that you have named.

But were it ſo here that all were admitted, that you can require, for the augmentation of our knowledge; and that all our theorems and general poſitions were utterly extinguiſhed with a new ſubſtitution of others in their places, what hope may we have of any benefit of learning by this alteration?

Assuredly, as ſoon as the new are brought with their additions *ad ἀκμὴν*, by the inventors and their followers, by an interchangeable courſe of natural things, they will fall by degrees to be buried in oblivion, and ſo on continuance to periſh out-right; and that perchance upon the like to your preſent pretences, by propoſal of ſome means to advance all our knowledge to an higher pitch of perfectneſs: for ſtill the ſame defects that antiquity found will reſide in mankind.

And therefore, other iſſues of their actions, devices and ſtudies are not to be expected, than is apparent by records were in former times obſerved.

I remember here a note which *Paterculus* made of the incomparable wits of the *Grecians* and *Romans* in their flouriſhing ſtate, that there might be this reaſon of their notable downfal in their iſſue that came after; becauſe by nature, *Quod ſummo ſtudio petitum eſt, aſcendit in ſummum, difficiliſque in perfecto mora eſt*; inſomuch, that men perceiving that they could go no farther, being come to the top, they turned back again of their own accord, forſaking thoſe ſtudies that are moſt in requeſt, and betaking themſelves to new endeavours, as if the thing that they ſought had been by prevention ſurpriſed by others.

So it fared in particular with the eloquence of that age, that when their ſucceſſors found that hardly they could equal, by no means excel their predeceſſors, they began to neglect the ſtudy thereof, and both to write and ſpeak for many hundred years in a ruſtical manner; till this later revolution brought the wheel about again, by inflaming gallant ſpirits to give the onſet afreſh, with ſtraining and ſtriving to climb unto the top and height of perfection, not in that gift only, but in every other ſkill in any part of learning.

For I do not hold it an erroneous conceit to think of every ſcience, that as now they are profeſſed, ſo they have been before in all precedent ages, though not alike in all places, nor at all times alike in one and the ſame place, but

but according to the changings and twinings of times, with a more exact and plain, or with a more rude and obſcure kind of teaching.

And if the queſtion ſhould be aſked, what proof I have of it, I have the doctrine of *Ariſtotle*, and of the deepeſt learned clerks, of whom we have any means to take any notice, that as there is of other things, ſo there is of ſciences, *ortus & interitus*, which is alſo the meaning, if I ſhould expound it, of *nihil novum ſub ſole*, and is as well to be applied, *ad facta*, as *ad dicta; ut nihil neque dictum neque factum quod non eſt dictum & factum prius.* I have farther for my warrant that famous complaint of *Solomon* to his ſon, againſt the infinite making of books in his time, of which in all congruity it muſt needs be underſtood, that a great part were obſervations and inſtructions in all kind of literature; and of thoſe there is not now ſo much as one petty pamphlet, only ſome parts of the bible excepted, remaining to poſterity.

As then there was not in like manner any footing to be found of millions of authors that were long before *Solomon*, and yet we muſt give credit to that which he affirmed, that whatſoever was then, or had been before, it could never be truely pronounced of it, behold this is new.

Whereupon I muſt for my final concluſion infer, ſeeing all the endeavours, ſtudy, and knowledge of mankind, in whatſoever art or ſcience, have ever been the ſame, as they are at this preſent, though full of mutabilities, according to the changes and accidental occaſions of ages and countries, and clerks diſpoſitions, which can never be but ſubject to intention and remiſſion, both in their devices and practices of their knowledge: If now we ſhould accord in opinion with you;

First, to condemn our preſent knowledge of doubts and incertitudes, which you confirm but by averment, without other force of argument, and then to diſclaim all our axioms and maxims, and general aſſertions that are left by tradition from our elders to us, which (for ſo it is to be pretended) have paſſed all probations of the ſharpeſt wits that ever were.

And laſtly, to deviſe, being now become again as it were *abecedarii* by the frequent ſpelling of particulars, to come to the notice of the true generals, and ſo afreſh to create new principles of ſciences, the end of all would be, that when we ſhall be diſpoſſeſſed of the learning which we have, all our conſequent travails will but help us in a circle to conduct us to the place from whence we ſet forward, and bring us to the happineſs to be reſtored *in integrum*, which will require as many ages as have marched before us to be perfectly atchieved.

And this I write with no diſlike of increaſing our knowledge with new-found devices, which is undoubtedly a practice of high commendation, in regard of the benefit they will yield for the preſent; that the world hath ever been, and will aſſuredly for ever continue very full of ſuch deviſors, whoſe induſtry hath been very obſtinate and eminent that way, and hath produced ſtrange effects, above the reach and the hope of mens common capacities; and yet our notions and theorems have always kept in grace both with them, and with the rareſt that ever were named among the learned. By this you ſee to what boldneſs I am brought by your kindneſs, that if I ſeem to be too ſaucy in this contradiction, it is the opinion that I hold of your noble diſpoſition, and of the freedom in theſe caſes that you will afford your ſpecial friend that hath induced me to do it. And although I my ſelf like a carrier's horſe cannot baulk the beaten way in which I have been trained, yet ſuch is my cenſure of your *Cogitata*, that I muſt tell you, to be plain, you have very much wronged your ſelf and the world, to ſmother ſuch a treaſure

ſo long in your coffer; for though I ſtand well aſſured for the tenor and ſubject of your main diſcourſe, you are not able to impannel a ſubſtantial jury in any univerſity that will give up a verdict to acquit you of error, yet it cannot be gainſaid, but all your treatiſe over doth abound with choice conceits of the preſent ſtate of learning, and with ſo worthy contemplations of the means to procure it, as may perſuade with any ſtudent to look more narrowly to his buſineſs, not only by aſpiring to the greateſt perfection of that which is now-a-days divulged in the ſciences, but by diving yet deeper into (as it were) the bowels and ſecrets of nature, and by enforcing of the powers of his judgment and wit, to learn of St. *Paul*, *conſectari meliora dona:* which courſe, would to God (to whiſper ſo much in your ear) you had followed at the firſt, when you fell into the ſtudy of ſuch a ſtudy as was not worthy ſuch a ſtudent. Nevertheleſs being ſo as it is, that you are therein ſettled, and your country ſoundly ſerved, I cannot but wiſh with all my heart, as I do very often, that you gain a fit reward to the full of your deſerts, which I hope will come with heaps of happineſs and honour.

Yours to be uſed and commanded,

From *Fulham*, *Feb.* 19. 1607.

THO. BODELEY.

POSTSCRIPT.

SIR,

ONE kind of boldneſs doth draw on another, inſomuch, as methinks, I ſhould offend not to ſignify, that before the tranſcript of your book be fitted for the preſs, it will be requiſite for you to caſt a cenſor's eye upon the ſtyle and the elocution; which in the framing of ſome periods, and in divers words and phraſes will hardly go for current, if the copy brought to me be juſt the ſame that you would publiſh.

XCIX. To Mr. MATTHEW, upon ſending to him a part of INSTAURATIO MAGNA.

Mr. MATTHEW,

I PLAINLY perceive by your affectionate writing, touching my work, that one and the ſame thing affecteth us both; which is, the good end to which it is dedicated: For as to any ability of mine, it cannot merit that degree of approbation. For your caution for church-men and church-matters, as for any impediment it might be to the applauſe and celebrity of my work, it moveth me not; but as it may hinder the fruit and good which may come of a quiet and calm paſſage to the good port to which it is bound, I hold it a juſt reſpect; ſo as to fetch a fair wind I go not too far about. But the troth is, that I at all have no occaſion to meet them in my way; except it be, as they will needs confederate themſelves with *Ariſtotle*, who, you know, is intemperately magnified by the ſchool-men; and is alſo allied, as I take it, to the Jeſuits, by *Faber*, who was a companion of *Loyola*, and a great *Ariſtotelian*. I ſend you at this time the only part which hath any harſhneſs; and yet I framed to my ſelf an opinion, that whoſoever allowed well of that preface which you ſo much commend, will not diſlike, or at leaſt ought not to diſlike this other ſpeech of preparation; for it is written out of the ſame ſpirit, and out of the ſame neceſſity: nay, it doth more fully lay open, that the queſtion between me and the ancients, is not of the virtue of the race, but of the rightneſs of the way. And to ſpeak truth, it is to the other but

as *palma* to *pugnus*, part of the ſame thing more large. You conceive aright that in this, and the other, you have commiſſion to impart and communicate them to others, according to your diſcretion. Other matters I write not of. My ſelf am like the miller of *Granchester*, that was wont to pray for peace amongſt the willows; for while the winds blew, the wind-mills wrought, and the water-mill was leſs cuſtomed. So I ſee that controverſies of religion muſt hinder the advancement of ſciences. Let me conclude with my perpetual wiſh towards your ſelf, that the approbation of your ſelf, by your own diſcreet and temperate carriage, may reſtore you to your country, and your friends to your ſociety. And ſo I commend you to God's goodneſs.

Gray's-Inn, Oct. 10. 1609.

C. To Mr. Matthew.

SIR,

I Thank you for your laſt, and pray you to believe, that your liberty in giving opinion of thoſe writings which I ſent you, is that which I ſought, which I expected, and which I take in exceeding good part; ſo good, as that it makes me recontinue, or rather continue my hearty wiſhes of your company here, that ſo you might uſe the ſame liberty concerning my actions, which now you exerciſe concerning my writings. For that of Queen *Elizabeth*, your judgment of the temper and truth of that part, which concerns ſome of her foreign proceedings, concurs fully with the judgment of others, to whom I have communicated part of it; and as things go, I ſuppoſe they are likely to be more and more juſtified and allowed. And whereas you ſay, for ſome other part, that it moves and opens a fair occaſion, and broad way, into ſome field of contradiction: on the other ſide, it is written to me from the leiger at *Paris*, and ſome others alſo, that it carries a manifeſt impreſſion of truth with it, and that it even convinces as it grows. Theſe are their very words; which I write not for mine own glory, but to ſhew what variety of opinion riſes from the diſpoſition of ſeveral readers. And I muſt confeſs my deſire to be, that my writings ſhould not court the preſent time, or ſome few places in ſuch ſort as might make them either leſs general to perſons, or leſs permanent in future ages. As to the *Inſtauration*, your ſo full approbation thereof, I read with much comfort, by how much more my heart is upon it; and by how much leſs I expected conſent and concurrence in a matter ſo obſcure. Of this I can aſſure you, that though many things of great hope decay with youth, (and multitude of civil buſineſſes is wont to diminiſh the price, though not the delight of contemplations;) yet the proceeding in that work doth gain with me upon my affection and deſire, both by years and buſineſſes. And therefore I hope, even by this, that it is well pleaſing to God, from whom, and to whom, all good moves. To him I moſt heartily commend you.

CI. To Mr. Matthew.

Mr. Matthew,

I Heartily thank you for your letter of the 10th of *February*, and am glad to receive from you matter both of encouragement, and of advertiſement touching my writings. For my part I do wiſh, that ſince there is no * *lumen ſiccum*, in the world, but all *madidum*, and *maceratum*, in-

* Our author alludes to one of the dark ſayings of *Heraclitus*, that dry light is ever the beſt; which in another place he thus expounds: Certainly the light that a man receiveth by counſel from another, is drier and purer than that which cometh from his own underſtanding and judgment, this being ever infuſed and drenched in his affections. *Stephens.*

fuſed

fuſed in affections, and bloods, or humours, that theſe things of mine had thoſe ſeparations that might make them more acceptable: ſo that they claim not ſo much acquaintance of the preſent times, as they be thereby the leſs apt to laſt. And to ſhew you that I have ſome purpoſe to new-mould them; I ſend you a leaf or two of the preface, carrying ſome figure of the whole work. Wherein I purpoſe to take that which I count real and effectual of both writings; and chiefly, to add a pledge, (if not payment,) to my promiſes, I ſend you alſo a memorial of Queen *Elizabeth*; to requite your eulogy of the late duke of † *Florence*'s felicity. Of this, when you were here, I ſhewed you ſome model; at what time, methought, you were more willing to hear *Julius Caeſar*, than Queen *Elizabeth*, commended. But this which I ſend is more full, and hath more of the narrative: And farther, hath one part that, I think, will not be diſagreeable either to you or that place; being the true tract of her proceedings towards the catholicks which are infinitely miſtaken. And though I do not imagine they will paſs allowance there, yet they will gain upon excuſe. I find Mr. *Le Zure* to uſe you well, (I mean his tongue of you,) which ſhews you either honeſt, or wiſe: but this I ſpeak merrily. For in good faith I do conceive hope, that you will ſo govern your ſelf, as we may take you as aſſuredly for a good ſubject and patriot, as you take your ſelf for a good chriſtian; and ſo we may again enjoy your company, and you your conſcience, if it may no otherways be. For my part aſſure your ſelf, (as we ſay in the law,) *mutatis mutandis*, my love and good wiſhes to you are not diminiſhed. And ſo I remain.

† This duke of *Florence* was named *Ferdinand* of the houſe of *Medici*; whoſe memory Sir *Henry Wotton* celebrated in a letter printed in his remains, and preſented to King *Charles* I. *Piaſecius* the biſhop of *Premiſta* in *Poland*, begins his chronicle of the year 1609, with an account of his death; and ſums up his character in theſe words: *Princeps animo excelſo, & omnibus politicis artibus in tantum inſtructus, ut in multis ſaeculis vix aequalem habuerit. Stephens.*

CII. To Mr. MATTHEW, upon ſending his book DE SAPIENTIA VETERUM.

Mr. MATTHEW,

I DO very heartily thank you for your letter of the 24th of *Auguſt* from *Salamanca*; and in recompence thereof I ſend you a little work of mine, that hath begun to paſs the world. They tell me my *Latin* is turn'd into ſilver, and become current: had you been here, you ſhould have been my inquiſitor before it came forth: But, I think, the greateſt inquiſitor in *Spain* will allow it. But one thing you muſt pardon me if I make no haſte to believe, that the world ſhould be grown to ſuch an ecſtaſy as to reject truth in philoſophy, becauſe the author diſſenteth in religion; no more than they do by *Ariſtotle* or *Averroes*. My great work goeth forward; and after my manner, I alter ever when I add. So that nothing is finiſhed till all be finiſhed. This I have witten in the midſt of a term and parliament; thinking no time ſo poſſeſſed, but that I ſhould talk of theſe matters with ſo good and dear a friend. And ſo with my wonted wiſhes I leave you to God's goodneſs.

From *Gray's Inn*,
Feb. 27. 1610.

CIII. To the KING.

It may pleaſe your Majeſty,

YOUR great and princely favours towards me in advancing me to place; and that which is to me of no leſs comfort, your Majeſty's benign and gracious acceptation from time to time of my poor ſervices, much above the merit

merit and value of them; hath almoſt brought me to an opinion that I may ſooner (perchance) be wanting to my ſelf in not aſking, than find your Majeſty's goodneſs wanting to me in any my reaſonable and modeſt deſires. And therefore perceiving how at this time preferments of law fly about mine ears, to ſome above me, and to ſome below me; I did conceive your Majeſty may think it rather a kind of dulneſs, or want of faith, than modeſty, if I ſhould not come with my pitcher to *Jacob*'s well as others do. Wherein I ſhall propound to your Majeſty, that which tendeth not ſo much to the raiſing of my fortune, as to the ſettling of my mind; being ſometimes aſſailed with this cogitation, that by reaſon of my ſlowneſs to ſee and apprehend ſudden occaſions, keeping on one plain courſe of painful ſervice; I may (*in fine dierum*) be in danger to be neglected and forgotten: and if that ſhould be, then were it much better for me, now while I ſtand in your Majeſty's good opinion (though unworthy) and have ſome little reputation in the world, to give over the courſe I am in, and to make proof to do you ſome honour by my pen, either by writing ſome faithful narrative of your happy (though not untraduced) times; or by recompiling your laws, (which, I perceive, your Majeſty labour-eth with; and hath in your head, as *Jupiter* had *Pallas*;) or ſome other the like work; (for without ſome endeavour to do you honour, I would not live;) than to ſpend my wits and time in this laborious place wherein I now ſerve; if it ſhall be deprived of thoſe outward ornaments which it was wont to have, in reſpect of an aſſured ſucceſſion to ſome place of more dignity and reſt; which ſeemeth now to be an hope altogether caſual, if not wholly intercepted. Wherefore, (not to hold your Majeſty long,) my humble ſuit to you is, that, than the which I think I cannot well go lower; which is, that I may obtain your royal promiſe to ſucceed, (if I live,) into the attorney's place, whenſoever it ſhall be void; it being but the natural and immediate ſtep and riſe which the place I now hold hath ever (in ſort) made claim to, and almoſt never failed of. In this ſuit I make no friends but to your Majeſty, rely upon no other motive but your grace, nor any other aſſurance but your word; whereof I had good experience, when I came to the ſollicitor's place; that it was like to the two great lights, which in their motions are never retrograde. So with my beſt prayers for your Majeſty's happineſs, I reſt.

CIV. To the KING.

It may pleaſe your moſt excellent Majeſty,

I Do underſtand by ſome of my good friends, to my great comfort, that your Majeſty hath in mind your Majeſty's royal promiſe, (which to me is *anchora ſpei*,) touching the attorney's place. I hope Mr. Attorney ſhall do well. I thank God I wiſh no man's death, nor much mine own life, more than to do your Majeſty ſervice. For I account my life the accident, and my duty the ſubſtance. But this I will be bold to ſay; if it pleaſe God that ever I ſerve your Majeſty in the attorney's place, I have known an attorney *Coke*, and an attorney *Hobart*, both worthy men, and far above my ſelf: but if I ſhould not find a middle way between their two diſpoſitions and carriages, I ſhould not ſatisfy my ſelf. But theſe things are far or near as it ſhall pleaſe God. Mean while, I moſt humbly pray your Majeſty to accept my ſacrifice of thankſgiving for your gracious favour. God preſerve your Majeſty. I ever remain.

CV. To the moſt high and excellent Prince, HENRY Prince of *Wales*, Duke of *Cornwall*, and Earl of *Cheſter*. *

It may pleaſe your Highneſs,

HAVING divided my life into the contemplative, and active part, I am deſirous to give his Majeſty, and your Highneſs, of the fruits of both, ſimple though they be.

TO write juſt treatiſes, requireth leiſure in the writer, and leiſure in the reader, and therefore are not ſo fit, neither in regard of your Highneſs's princely affairs, nor in regard of my continual ſervice; which is the cauſe, that hath made me chuſe to write certain brief notes, ſet down rather ſignificantly, than curiouſly, which I have called *Eſſays*. The word is late, but the thing is ancient; for *Seneca's* Epiſtles to *Lucilius*, if you mark them well, are but eſſays, that is, diſperſed Meditations, though conveyed in the form of Epiſtles. Theſe labours of mine, I know, cannot be worthy of your Highneſs, for what can be worthy of you? But my hope is, they may be as grains of ſalt, that will rather give you an appetite, than offend you with ſatiety. And although they handle thoſe things wherein both men's lives, and their perſons are moſt converſant; yet what I have attained I know not; but I have endeavoured to make them not vulgar, but of a nature, whereof a man ſhall find much in experience, and little in books; ſo as they are neither repetitions nor fancies. But however, I ſhall moſt humbly deſire your Highneſs to accept them in gracious part, and to conceive that if I cannot reſt, but muſt ſhew my dutiful and devoted affection to your Highneſs in theſe things which proceed from my ſelf, I ſhall be much more ready to do it in performance of any of your princely commandments. And ſo wiſhing your Highneſs all princely felicity, I reſt,

Your Highneſs's moſt humble ſervant,

FR. BACON.

Sir *Francis Bacon* deſign'd to have prefix'd this epiſtle to his *Eſſays*, printed in the year 1612, but was prevented by the Prince's death; yet it was ſo well liked by Mr. *Matthew*, that he inſerted part of it in his dedication to the Duke of *Tuſcany*, before his tranſlation of thoſe *Eſſays*, printed in 1618.

CVI. To the Earl of SALISBURY Lord Treaſurer.

It may pleaſe your good Lordſhip,

I WOULD intreat the new year to anſwer for the old, in my humble thanks to your lordſhip; both for many your favours, and chiefly upon the occaſion of Mr. Attorney's infirmity, I found your lordſhip even as I could wiſh. This doth increaſe a deſire in me, to expreſs my thankful mind to your lordſhip; hoping that though I find age and decays grow upon me, yet I may have a flaſh or two of ſpirit left to do you ſervice: and I do proteſt before God without complement, or any light vanity of mind; that if I knew in what courſe of life to do you beſt ſervice, I would take it, and make my thoughts, which now fly to many pieces, to be reduced to that center. But all this is no more but that I am, which is not much, but yet the entire of him that is, *&c.*

CVII. To

CVII. To my Lord Mayor.

My very good Lord,

I Did little expect, when I left your lordſhip laſt, that there would have been a proceeding againſt Mr. *Barnard* to his overthrow: wherein I muſt confeſs my ſelf to be in a ſort acceſſary; becauſe he relying upon me for counſel, I adviſed that courſe which he followed. Wherein now I begin to queſtion my ſelf, whether in preſerving my reſpects unto your lordſhip, and the reſt, I have not failed in the duty of my profeſſion towards my client. For certainly, if the words had been heinous, and ſpoken in a malicious faſhion, and in ſome publick place, and well proved; and not a prattle in a tavern, caught hold of by one who (as I hear) is a detected ſycophant (*Standiſh* I mean;) yet I know not what could have been done more, than to impoſe upon him a grievous fine, and to require the levying the ſame; and to take away his means of life by his disfranchiſement, and to commit him to a defamed priſon during *Chriſtmas*; in honour whereof, the priſoners in other courts do commonly of grace obtain ſome enlargement. This rigor of proceeding (to tell your lordſhip and the reſt, as my good friends, my opinion plainly) tendeth not to ſtrengthen authority, which is beſt ſuppoſed by love and fear intermixed; but rather to make people diſcontented and ſervile; eſpecially when ſuch puniſhment is inflicted for words not by rule of law, but by a juriſdiction of diſcretion, which would ever more be moderately uſed. And I pray God, whereas Mr. Recorder, when I was with you, did well and wiſely put you in mind of the admonitions you often received from my lords, that you ſhould bridle unruly tongues; that thoſe kind of ſpeeches and rumours, whereunto thoſe admonitions do refer, which are concerning the ſtate, and honour thereof, do not paſs too licentiouſly in the city unpuniſhed; while theſe words which concern your particular, are ſo ſtraitly enquired into and puniſhed with ſuch extremity. But theſe things your own wiſdom (firſt or laſt) will beſt repreſent unto you. My writing unto you at this time is, to the end, that howſoever I do take it ſomewhat unkindly, that my mediation prevailed no more; yet that I might preſerve that farther reſpect that I am willing to uſe unto ſuch a ſtate, in delivering my opinion unto you freely, before I would be of counſel, or move any thing that ſhould croſs your proceedings; which, notwithſtanding, (in caſe my client can receive no relief at your hands,) I muſt and will do. Continuing nevertheleſs, in other things, my wonted good affection to your ſelves and your occaſions.

CVIII. To Sir *Vincent Skinner*.

Sir † *Vincent Skinner*,

† Officer of the receipts of the exchequer. *Rymer* XVI. p. 497.

I See that by your needleſs delays, this matter is grown to a new queſtion; wherein for the matter itſelf, if it had been ſtaid at the beginning by my Lord Treaſurer and Mr. Chancellor, I ſhou'd not ſo much have ſtood upon it. For the great and daily travels which I take in his Majeſty's ſervice, either are rewarded in themſelves, in that they are but my duty, or elſe may deſerve a much greater matter. Neither can I think amiſs of any man, that in furtherance of the King's benefit moved the doubt, that knew not what warrant I had. But my wrong is, that you, having had my Lord Treaſurer's

Treaſurer's and Mr. Chancellor's warrant for payment above a month ſince; you, I ſay, (making your payments belike, upon ſuch differences, as are better known to yourſelf than agreeable to the reſpect of his Majeſty's ſervice;) have delay'd all this time otherwiſe than I might have expected from our ancient acquaintance, or from that regard which one in your place may owe to one in mine. By occaſion whereof there enſueth to me a greater inconvenience; that now my name in ſort muſt be in queſtion among you, as if I were a man likely to demand that which were unreaſonable, or be denied that which is reaſonable: and this muſt be, becauſe you can pleaſure men at pleaſure. But this I leave with this: That it is the firſt matter wherein I had occaſion to diſcern of your friendſhip, which I ſee to fall to this; that whereas Mr. Chancellor, the laſt time in my man's hearing, very honourably ſaid, that he would not diſcontent any man in my place; it ſeems you have no ſuch caution. But my writing to you now, is to know of you where now the ſtay is, without being any more beholden to you, to whom indeed no man ought to be beholden in thoſe caſes in a right courſe. And ſo I bid you farewel.

FRA. BACON.

CIX. To Sir * *Henry Saville.*

SIR,

COMING back from your invitation at *Eton*, where I had refreſhed myſelf with company which I loved, I fell into a conſideration of that part of policy whereof philoſophy ſpeaketh too much, and laws too little; and that is, of education of youth. Whereupon fixing my mind a while, I found ſtreightways, and noted even in the diſcourſes of philoſophers, which are ſo large in this argument, a ſtrange ſilence concerning one principal part of that ſubject. For as touching the framing and ſeaſoning of youth to moral virtues, (as tolerance of labours, continency from pleaſures, obedience, honour, and the like) they handle it; but touching the improvement, and helping of the intellectual powers, as of conceit, memory and judgment, they ſay nothing; whether it were, that they thought it to be a matter wherein nature only prevailed; or that they intended it, as referred, to the ſeveral and proper arts, which teach the uſe of reaſon and ſpeech. But for the former of theſe two reaſons, howſoever it pleaſeth them to diſtinguiſh of habits and powers, the experience is manifeſt enough, that the motions and faculties of the wit and memory may be not only governed and guided, but alſo confirmed and enlarged by cuſtom and exerciſe duly applied; as if a man exerciſe ſhooting, he ſhall not only ſhoot nearer the mark, but alſo draw a ſtronger bow. And as for the later, of comprehending theſe precepts within the arts of logick and rhetorick, if it be rightly conſidered, their office is diſtinct altogether from this point; for it is no part of the doctrine of the uſe or handling of an inſtrument, to teach how to whet or grind the inſtrument to give it a ſharp edge, or how to quench it, or otherwiſe whereby to give it a ſtronger temper. Wherefore finding this

* Sir *Henry Saville*, ſo juſtly celebrated for his noble edition of St. *Chryſoſtom* and other learned works, was many years warden of *Merton-College* in *Oxford*, (in which univerſity he founded a geometry and aſtronomy lecture 25 *May* 1620. See the inſtrument of foundation, *Rymer* XVII. p. 217.) and likewiſe provoſt of *Eton*. To this gentleman, as of all the moſt proper, Sir *Francis Bacon* ſends this diſcourſe touching *Helps for the intellectual powers in youth*; but being an imperfect eſſay to incite others, he places this uſeful ſubject among the deficients reckon'd up in his *Advancement of Learning*. *Stephens.*

part of knowledge not broken, I have, but *tanquam aliud agens*, enter'd into it, and ſalute you with it; dedicating it, after the ancient manner, firſt as to a dear friend, and then as to an apt perſon, foraſmuch as you have both place to practiſe it, and judgment and leiſure to look deeper into it than I have done. Herein you muſt call to mind, Ἄριστον μὲν ὕδωρ. Tho' the argument be not of great height and dignity, nevertheleſs it is of great and univerſal uſe: And yet I do not ſee why, to conſider it rightly, that ſhou'd not be a learning of height, which teacheth to raiſe the higheſt and worthieſt part of the mind. But howſoever that be, if the world take any light and uſe by this writing, I will the gratulation be to the good friendſhip and acquaintance between us two: And ſo recommend you to God's divine protection.

A diſcourſe touching helps for the intellectual powers.

I DID ever hold it for an inſolent and unlucky ſaying, *faber quiſque fortunae ſuae*; except it be uttered only as an hortative or ſpur to correct ſloth. For otherwiſe, if it be believed as it ſoundeth, and that a man entereth into an high imagination that he can compaſs and fathom all accidents; and aſcribeth all ſucceſſes to his drifts and reaches; and the contrary to his errors and ſleepings: it is commonly ſeen that the evening fortune of that man is not ſo proſperous as of him that without ſlackening of his induſtry attributeth much to felicity and providence above him. But if the ſentence were turned to this *faber quiſque ingenii ſui*, it were ſomewhat more true, and much more profitable; becauſe it would teach men to bend themſelves to reform thoſe imperfections in themſelves which now they ſeek but to cover, and to attain thoſe virtues and good parts which now they ſeek but to have only in ſhow and demonſtration: Yet notwithſtanding every man attempteth to be of the firſt trade of carpenters, and few bind themſelves to the ſecond; whereas nevertheleſs the riſing in fortune ſeldom amendeth the mind; but on the other ſide, the removing of the ſtands and impediments of the mind, doth often clear the paſſage and current to a man's fortune. But certain it is, whether it be believed or no, that as the moſt excellent of metals gold is of all other the moſt pliant and moſt enduring to be wrought; ſo of all living and breathing ſubſtances, the perfecteſt (man) is the moſt ſuſceptible of help, improvement, impreſſion and alteration; and not only in his body, but in his mind and ſpirit; and there again not only in his appetite and affection, but in his powers of wit and reaſon.

FOR as to the body of man, we find many and ſtrange experiences, how nature is over-wrought by cuſtom, even in actions that ſeem of moſt difficulty and leaſt poſſible. As firſt in voluntary motion, which tho' it be termed voluntary, yet the higheſt degrees of it are not voluntary; for it is in my power and will to run; but to run faſter than according to my lightneſs or diſpoſition of body, is not in my power nor will. We ſee the induſtry and practice of tumblers and *funambulo's*, what effects of great wonder it bringeth the body of man unto. So for ſuffering of pain and dolour, which is thought ſo contrary to the nature of man, there is much example of penances in ſtrict orders of ſuperſtition what they do endure, ſuch as may well verify the report of the *Spartan* boys, which were wont to be ſcourged upon the altar ſo bitterly as ſometimes they died of it, and yet were never heard to complain. And to paſs to thoſe faculties which are reckon'd more involuntary,

as long faſting and abſtinence, and the contrary extreme (voracity) the leaving and forbearing the uſe of drink for altogether, the enduring vehement cold and the like; there have not wanted, neither do want divers examples of ſtrange victories over the body in every of theſe. Nay, in reſpiration the proof hath been of ſome who by continual uſe of diving and working under the water have brought themſelves to be able to hold their breath an incredible time; and others that have been able without ſuffocation, to endure the ſtifling breath of an oven or furnace ſo heated as tho' it did not ſcald nor burn, yet it was many degrees too hot for any man not made to it to breathe or take in. And ſome impoſtors and counterfeits likewiſe have been able to wreath and caſt their bodies into ſtrange forms and motions; yea, and others to bring themſelves into trances and aſtoniſhments. All which examples do demonſtrate how variouſly and to how high points and degrees the body of man may be as it were moulded and wrought: And if any man conceive then it is ſome ſecret propriety of nature that hath been in thoſe perſons which have attained to thoſe points, and that it is not open for every man to do the like tho' he had been put to it; for which cauſe ſuch things come but very rarely to paſs: It is true no doubt but ſome perſons are apter than others; but ſo as the more aptneſs cauſeth perfection, but the leſs aptneſs doth not diſable: So that for example, the more apt child, that is taken to be made *à funambulo*, will prove more excellent in his feats; but the leſs apt will be *gregarius funambulo* alſo. And there is ſmall queſtion, but that theſe abilities would have been more common, and others of like ſort not attempted would likewiſe have been brought upon the ſtage, but for two reaſons: The one becauſe of mens diffidence in prejudging them as impoſſibilities; for it holdeth in thoſe things which the poet ſaith, *poſſunt quia poſſe videntur*; for no man ſhall know how much may be done, except he believe much may be done. The other reaſon is, becauſe they be but practices baſe and inglorious and of no great uſe, and therefore ſequeſter'd from reward of value, and on the other ſide painful; ſo as the recompence balanceth not with the travail and ſuffering. And as to the will of man, it is that which is moſt manageable and obedient; as that which admitteth moſt medicines to cure and alter it. The moſt ſovereign of all is religion, which is able to change and transform it in the deepeſt and moſt inward inclinations and motions; and next to that is opinion and apprehenſion, whether it be infuſed by tradition and inſtitution, or wrought in by diſputation and perſuaſion; and the third is example, which transformeth the will of man into the ſimilitude of that which is moſt obverſant and familiar towards it; and the fourth is, when one affection is healed and corrected by another, as when cowardice is remedied by ſhame and diſhonour, or ſluggiſhneſs and backwardneſs by indignation and emulation, and ſo of the like; and laſtly, when all theſe means or any of them have new framed or formed human will, then doth cuſtom and habit corroborate and confirm all the reſt: Therefore it is no marvel, tho' this faculty of the mind, (of will and election) which inclineth affection and appetite, being but the inceptions and rudiments of will, may be ſo well governed and managed; becauſe it admitteth acceſs to ſo divers remedies to be applied to it and to work upon it: The effects whereof are ſo many and ſo known, as require no enumeration; but generally they do iſſue as medicines do into two kinds of cures, whereof the one is a juſt or true cure, and the other is called palliation: For either the labour and intention is to reform the affections really and truly, reſtraining them if they be too violent, and raiſing them if they be too ſoft and weak; or elſe it is to

cover them; or, if occaſion be, to pretend them and repreſent them: Of the former ſort whereof the examples are plentiful in the ſchools of philoſophers, and in all other inſtitutions of moral virtue; and of the other ſort the examples are more plentiful in the courts of Princes, and in all politick traffick: where it is ordinary to find, not only profound diſſimulations and ſuffocating the affections, that no note or mark appear of them outwardly; but alſo lively ſimulations and affectations carrying the tokens of paſſions which are not, as *riſus juſſus* and *lacrymae coactae*, and the like.

Of helps of the intellectual powers.

THE intellectual powers have fewer means to work upon them than the will or the body of man; but the one that prevaileth, that is exerciſe, worketh more forcibly in them than the reſt.

THE ancient habit of the philoſophers, *Si quis quaerat in utramque partem de omni ſcibili.* — Theſe that follow are but indigeſted notes.

THE exerciſe of ſcholars making verſes *extempore*, *Stans pede in uno.*

THE exerciſe of lawyers in memory narrative.

THE exerciſe of *ſophiſts*, and *Jo. ad oppoſitum*, with manifeſt effect.

ARTIFICIAL memory greatly holpen by exerciſe.

THE exerciſe of buffoons to draw all things to conceits ridiculous.

THE means that help the underſtanding and faculties thereof are,

(NOT example, as in the will, by converſation; and here the conceit of imitation already digeſted, with the confutation, *obiter*, *ſi videbitur*, of *Tully*'s opinion, adviſing a man to take ſome one to imitate. Similitude of faces analyſed.)

ARTS, Logic, Rhetoric: The ancients, *Ariſtotle*, *Plato*, *Theaetetus*; *Gorgias litigioſus vel ſophiſta*, *Protagoras*, *Ariſtotle*, *ſchola ſua*. Topics, Elenchs, Rhetorics, *Organon*, *Cicero*, *Hermogenes*. The neoterics, *Ramus*, *Agricola*. *Nil ſacri*; *Lullius* his *Typocoſmia*, ſtudying *Cooper*'s dictionary, *Matthaeus* collection of proper words for metaphors, *Agrippa de vanitatibus*, *&c.*

Que. IF not here of imitation.

COLLECTIONS preparative. *Ariſtotle*'s ſimilitude of a ſhoemaker's ſhop, full of ſhoes of all ſorts: *Demoſthenes*, *Exordia concionum*. *Tully*'s precept of *theſes* of all ſorts preparative.

THE relying upon exerciſe, with the difference of uſing and tempering the inſtrument; and the ſimilitude of preſcribing againſt the laws and nature of eſtate.

Five Points.

1. THAT exerciſes are to be framed to the life; that is to ſay, to work ability in that kind whereof a man, in the courſe of action, ſhall have moſt uſe.

2. THE indirect and oblique exerciſes, which do, *per partes* and *per conſequentiam*, inable theſe faculties; which perhaps direct exerciſe at firſt would but diſtort; and theſe have chiefly place where the faculty is weak, not *per ſe*, but *per accidens*: As if want of memory grow through lightneſs of wit and want of ſtaid attention; then the mathematics or the law helpeth; becauſe they are things, wherein if the mind once roam, it cannot recover.

3. OF the advantages of exerciſe; as to dance with heavy ſhoes, to march with heavy armour and carriage; and the contrary advantage (in natures very dull and unapt) of working alacrity, by framing an exerciſe with ſome delight or affection; *Horat. Sat.* I. 25.

——*Ut*

———Ut pueris olim dant cruſtula blandi
Doctores, elementa velint ut diſcere prima.

4. Of the cautions of exerciſe; as to beware leſt by evil doing (as all beginners do weakly) a man grow not, and be inveterate, in an ill habit, and ſo take not the advantage of cuſtom in perfection, but in confirming ill. Slubbering on the lute.

5. The marſhalling and ſequel of ſciences and practices: Logic and rhetoric ſhould be uſed to be read after poeſy, hiſtory and philoſophy: Firſt, exerciſe, to do things well and clean: after, promptly and readily.

The exerciſes in the univerſities and ſchools are of memory and invention; either to ſpeak by heart that which is ſet down *verbatim*, or to ſpeak *extempore*: whereas there is little uſe in action of either or both; but moſt things which we utter are neither verbally premeditate, nor merely extemporal. Therefore exerciſe would be framed to take a little breathing, and to conſider of heads; and then to fit and form the ſpeech *extempore*. This would be done in two manners; both with writing and tables, and without: for in moſt actions it is permitted and paſſable to uſe the note, whereunto, if a man be not accuſtomed, it will put him out.

There is no uſe of a narrative memory *in academiis, viz.* with circumſtances of times, perſons and places, and with names; and it is one art to diſcourſe, and another to relate and deſcribe; and herein uſe and action is moſt converſant.

Also to ſum up and contract, is a thing in action of very general uſe.

CX. Sir Francis Bacon to Mr. Matthew, about his writings, and the death of a friend.

SIR,

THE reaſon of ſo much time taken before my anſwer to yours of the fourth of *Auguſt*, was chiefly my accompanying my letter with the paper which here I ſend you; and again, now lately, (not to hold from you till the end of a letter, that which by grief may, for a time, efface all the former contents) the death of your good friend and mine *A. B.* to whom, becauſe I uſed to ſend my letters for conveyance to you, it made me ſo much the more unready in the diſpatch of them. In the mean time I think my ſelf (howſoever it have pleaſed God otherwiſe to bleſs me) a moſt unfortunate man, to be deprived of two (a great number in true friendſhip) of thoſe friends, whom I accounted as no ſtage-friends, but private friends; (and ſuch, as with whom I might both freely and ſafely communicate;) him by death, and you by abſence. As for the memorial of the late deceaſed Queen, I will not queſtion whether you be to paſs for a diſintereſted man or no; I freely confeſs my ſelf am not, and ſo I leave it. As for my other writings, you make me very glad of your approbation; the rather, becauſe you add a concurrence in opinion with others; for elſe I might have conceived, that affection would, perhaps, have prevailed with you, beyond that, which (if your judgment had been neat and free) you could have eſteemed. And as for your caution, touching the dignity of eccleſiaſtical perſons, I ſhall not have cauſe to meet with them any otherwiſe, than in that ſome ſchool-men have, with exceſs, advanced the authority of *Ariſtotle*. Other occaſion I ſhall have none. But now I have ſent you that only part of the whole writing, which may perhaps have a little harſhneſs

harſhneſs and provocation in it: although I may almoſt ſecure my ſelf, that if the preface paſſed ſo well, this will not irritate more; being indeed, to the preface, but as *palma ad pugnum*. Your own love expreſſed to me, I heartily embrace; and hope that there will never be occaſion of other, than entireneſs between us; which nothing but *majores charitates*, ſhall ever be able to break off.

CXI. To the KING.

It may pleaſe your excellent Majeſty,

IT grieveth me exceedingly that your Majeſty ſhould be ſo much troubled with this matter of *Peacham*, whoſe raging devil ſeemeth to be turn'd into a dumb devil. But although we are driven to make our way through queſtions, (which I wiſh were otherwiſe,) yet I hope well the end will be good. But then every man muſt put to his helping hand; for elſe I muſt ſay to your Majeſty, in this and the like caſes, as St. *Paul* ſaid to the centurion, when ſome of the mariners had an eye to the cock-boat, except theſe ſtay in the ſhip ye cannot be ſafe. I find in my lords great and worthy care of the buſineſs: And for my part, I hold my opinion and am ſtrengthened in it by ſome records that I have found. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Jan. 21. 1614. FR. BACON.

CXII. To the KING, touching *Peacham*' cauſe.

It may pleaſe your excellent Majeſty,

THIS day in the afternoon was read your Majeſty's letters of direction touching * *Peacham*; which becauſe it concerneth properly the duty of my place, I thought it fit for me to give your Majeſty both a ſpeedy and a private account thereof; that your Majeſty knowing things clearly how they paſs, may have the true fruit of your own wiſdom and clear-ſeeing judgment in governing the buſineſs.

FIRST, for the regularity which your Majeſty (as a maſter in buſineſs of eſtate,) doth prudently preſcribe in examining and taking examinations, I ſubſcribe to it; only I will ſay for my ſelf, that I was not at this time the principal examiner.

FOR the courſe your Majeſty directeth and commandeth for the feeling of the judges of the King's bench, their ſeveral opinions, by diſtributing our ſelves and enjoining ſecrecy; we did firſt find an encounter in the opinion of my Lord *Coke*, who ſeemed to affirm, that ſuch particular and (as he call'd it) auricular taking of opinions was not according to the cuſtom of this realm; and ſeemed to divine, that his brethren would never do it. But when I replied, that it was our duty to purſue your Majeſty's directions; and it were not amiſs for his lordſhip to leave his brethren to their own anſwers: it was ſo concluded; and his lordſhip did deſire that I might confer with himſelf;

* *Peacham* was accuſed of having inſerted ſeveral treaſonable paſſages in a ſermon; but in a ſermon never preached, nor intended to be made publick: it had been taken out of his ſtudy. The King would have the judges give their opinion of this affair privately and apart; which my Lord *Coke* refuſed to do, as a thing of dangerous tendency. *Peacham* was found guilty of high treaſon; as was *Algernon Sidney* for the like crime, in *Charles* the ſecond's time.

and Mr. Serjeant *Mountague* was named to ſpeak with Juſtice *Crook*; Mr. Serjeant *Crew* with Juſtice *Houghton*; and Mr. Sollicitor with Juſtice * *Dodderidge*. This done, I took my fellows aſide, and adviſed that they ſhould preſently ſpeak with the three judges, before I could ſpeak with my Lord *Coke*, for doubt of infuſion; and that they ſhould not in any caſe make any doubt to the judges, as if they miſtruſted they would not deliver any opinion apart, but ſpeak reſolutely to them, and only make their coming to be, to know what time they would appoint to be attended with the papers: This ſorted not amiſs; for Mr. Sollicitor came to me this evening, and related to me that he had found Judge *Dodderidge* very ready to give opinion in ſecret; and fell upon the ſame reaſon, which upon your Majeſty's firſt letter I had uſed to my Lord *Coke* at the council-table; which was, that every judge was bound expreſly by his oath, to give your Majeſty counſel when he was called; and whether he ſhould do it jointly or ſeverally, that reſted in your Majeſty's good pleaſure, as you would require it. And though the ordinary courſe was to aſſemble them, yet there might intervene caſes, wherein the other courſe was more convenient. The like anſwer made † Juſtice *Crook*: Juſtice *Houghton*, ‡ who is a ſoft man, ſeemed deſirous firſt to confer; alledging that the other three judges had all ſerved the crown before they were judges, but that he had not been much acquainted with buſineſs of this nature.

We purpoſe therefore forthwith, they ſhall be made acquainted with the papers; and if that could be done as ſuddenly as this was, I ſhould make ſmall doubt of their opinions: and howſoever, I hope, force of law and precedent will bind them to the truth: neither am I wholly out of hope,

* Sir *John Dodderidge* was born in *Devonſhire*, and ſucceſſively admitted in *Exeter* college *Oxford*, and the *Middle Temple*, *London*: where having acquired the reputation of being a very great common and civil lawyer, as well as a general ſcholar, he was made ſerjeant at law 1 *Jacobi*, then the King's ſollicitor, and after that the King's ſerjeant, till he was advanced to be one of the judges of the *King*'s bench; where he ſat many years. He died 13 *Sept.* 1628, in the 73d year of his age, and was ſucceeded by Sir *George Crook*, who tells us, Sir *John Dodderidge* was a man of great knowledge, as well in the common law, as in other ſciences, and divinity. *Stephens.* See p. 98. of this Vol.

† Sir *John Crook*, eldeſt Son of Sir *John Crook* of *Chilton* in *Buckinghamſhire*, inherited his father's virtues and fortunes; and was very famous for his wiſdom, eloquence, and knowledge in our laws: who being Speaker of the houſe of commons in the laſt parliament of Queen *Elizabeth*, had from her this commendation at the end thereof; that he had proceeded therein with ſuch wiſdom and diſcretion, that none before him had deſerved better. After he had been recorder of *London*, and ſerjeant at law, he was 5 *Jacobi* made one of the juſtices of the King's bench; where he continued till his death, 23 *Jan.* 1619. He was brother to Sir *George Crook* ſo well known to the profeſſors of the common laws by his three large volumes of reports: which Sir *George* was one of the judges of the court of common pleas, in the latter end of the reign of King *James*, and in a few years after removed into the King's bench; where he ſate till the year 1641, when, by reaſon of his great age and infirmities, the King at his own requeſt gave him a gracious diſcharge, as appears in the preface to one of his books, where a due character is given of his virtues by his ſon-in-law Sir *Harbottle Grimſton*, late maſter of the rolls. But certainly nothing can raiſe in us a more lively idea of his merit, than part of a letter written to the Duke of *Buckingham*, by the biſhop of *Lincoln* Lord Keeper of the great ſeal, which I copied from his own hand.

May it pleaſe your Grace, *Weſtminſter* coll. Feb. 11. 1624.

I Will not trouble your grace with any long congratulation, for the honour your grace hath gained, in the preferring of this moſt worthy man Sir *George Crook* to a judge his place. I know you muſt meet with the applauſe of this act from every man that cometh from hence. In good faith, I never obſerved in all my ſmall experience any accident in this kind, ſo generally and univerſally accompanied with the acclamation of all kind of people.

I am importuned by the reſt of the judges of the common pleas, to return their moſt humble and hearty thanks to the King's Majeſty for his choice, and to aſſure his Majeſty, that though his Majeſty hath been extraordinary fortunate (above all his predeceſſors) in the continual election of moſt worthy judges; yet hath his Majeſty never placed upon any bench, a man of more integrity and ſufficiency than this gentleman: For which act they do with tears in their eyes praiſe and bleſs him. *Stephens.*

‡ This expreſſion is to be underſtood in a favourable ſenſe, ſince Sir *George Crook* gives a more than ordinary character of him. *Mem.* That in *Hilary* term, 21 *Jac.* Sir *Robert Houghton* died at *Serjeants-Inn* in *Chancery-lane*, being a moſt reverend, prudent, learned, and temperate judge, and inferiour to none of his time. *Stephens.*

that

that my Lord *Coke* himſelf, when I have in ſome dark manner put him in doubt that he ſhall be left alone, will not continue ſingular.

For *Owen*, I know not the reaſon why there ſhould have been no mention made thereof in the laſt advertiſement: for I muſt ſay for my ſelf, that I have loſt no moment of time in it, as my lord of *Canterbury* can bear me witneſs. For having received from my lord an additional of great importance; which was, that *Owen* of his own accord after examination ſhould compare the caſe of your Majeſty, (if you were excommunicate,) to the caſe of a priſoner condemned at the bar; which additional was ſubſcribed by one witneſs; but yet I perceived it was ſpoken aloud, and in the hearing of others: I preſently ſent down a copy thereof, which is now come up, atteſted with the hands of three more, leſt there ſhould have been any ſcruple of *ſingularis teſtis*; ſo as for this caſe I may ſay, *omnia parata*; and we expect but a direction from your Majeſty for the acquainting the judges ſeverally; or the four judges of the King's bench, as your Majeſty ſhall think good.

I forget not, nor forſlow not, your Majeſty's commandment touching recuſants; of which, when it is ripe, I will give your Majeſty a true account, and what is poſſible to be done, and where the impediment is. Mr. Secretary bringeth *bonam voluntatem*, but he is not verſed much in theſe things; and ſometimes urgeth the concluſion without the premiſſes, and by haſte hindereth. It is my lord treaſurer, and the exchequer muſt help it, if it be holpen. I have heard more ways than one, of an offer of 20000 *l. per annum*, for farming the penalties of recuſants, not including any offence capital, or of *praemunire*; wherein I will preſume to ſay, that my poor endeavours, ſince I was by your great and ſole grace your attorney, have been no ſmall ſpurs to make them feel your laws, and ſeek this redemption; wherein I muſt alſo ſay, my Lord *Coke* hath done his part. And I do aſſure your Majeſty, I know it ſomewhat inwardly and groundedly, that by the courſes we have taken they conform daily and in great numbers; and I would to God it were as well a converſion as a conformity: but if it ſhould die by diſpenſation or diſſimulation, then I fear that whereas your Majeſty hath now ſo many ill ſubjects poor and detected, you ſhall then have them rich and diſſembled. And therefore I hold this offer very conſiderable, of ſo great an increaſe of revenue: if it can paſs the fiery trial of religion and honour; (which I wiſh) all projects may paſs.

Thus, in as much as I have made to your Majeſty, ſomewhat a naked and particular account of buſineſs, I hope your Majeſty will uſe it accordingly. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Jan. 27. 1614. Fr. Bacon.

CXIII. To the K I N G.

It may pleaſe your excellent Majeſty,

BECAUSE I know your Majeſty would be glad to hear how it is with my lord chancellor; and that it pleaſed him, out of his ancient and great love to me, (which many times in ſickneſs appeareth moſt) to admit me to a great deal of ſpeech with him this afternoon, which during theſe three days he hath ſcarcely done to any, I thought it might be pleaſing to your Majeſty to certify you how I found him. I found him in bed, but his ſpirits freſh and good, ſpeaking ſtoutly, and without being ſpent or weary; and

and both willing and beginning of himſelf to ſpeak, but wholly of your Majeſty's buſineſs: wherein I cannot forget to relate this particular; that he wiſhed, that his ſentencing of *O. S.* at the day appointed might be his laſt work, to conclude his ſervices and expreſs his affection towards your Majeſty. I told him, I knew your Majeſty would be very deſirous of his preſence that day, ſo it might be without prejudice; but otherwiſe, your Majeſty eſteemed a ſervant more than a ſervice, eſpecially ſuch a ſervant. Not to trouble your Majeſty, though good ſpirits in ſickneſs be uncertain kalendars, yet I have very good comfort of him, and I hope by that day, *&c.*

Mr. *Oliver St. John.*

Jan. 29. 1614.

CXIV. To the KING, touching *Peacham*, &c.

It may pleaſe your excellent Majeſty,

I RECEIVED this morning by Mr. *Murray*, a meſſage from your Majeſty, of ſome warrant and confidence that I ſhould advertiſe your Majeſty of your buſineſs, wherein I had part: Wherein, I am firſt humbly to thank your Majeſty for your good acceptation of my endeavours and ſervice, which I am not able to furniſh with any other quality, ſave faith and diligence.

FOR *Peacham*'s caſe, I have, ſince my laſt letter, been with my Lord *Coke* twice; once before Mr. Secretary's going down to your Majeſty, and once ſince, which was yeſterday: at the former of which times I delivered him *Peacham*'s papers; and at this later the precedents, which I had with care gathered and ſelected: for theſe degrees and order the buſineſs required.

AT the former I told him that he knew my errand, which ſtood upon two points; the one to inform him of the particular caſe of *Peacham*'s treaſons, (for I never give it other word to him;) the other, to receive his opinion to my ſelf, and in ſecret, according to my commiſſion from your Majeſty.

AT the former time he fell upon the ſame allegation which he had begun at the council-table; that judges were not to give opinion by fractions, but entirely according to the vote, whereupon they ſhould ſettle upon conference: and that this auricular taking of opinions, ſingle and apart, was new and dangerous; and other words more vehement than I repeat.

I replied in civil and plain terms, that I wiſh'd his lordſhip, in my love to him to think better of it: for that this, that his lordſhip was pleaſed to put into great words, ſeemed to me and my fellows, when we ſpake of it amongſt our ſelves, a reaſonable and familiar matter, for a King to conſult with his judges, either aſſembled or ſelected, or one by one. And then to give him a little out-let to ſave his firſt opinion, (wherewith he is moſt commonly in love,) I added, that judges ſometimes might make a ſuit to be ſpared for their opinion, till they had ſpoken with their brethren; but if the King, upon his own princely judgment, for reaſon of eſtate, ſhould think it fit to have it otherwiſe, and ſhould ſo demand it, there was no declining: nay, that it touched upon a violation of their oath, which was to counſel the King without diſtinction, whether it were jointly or ſeverally. Thereupon, I put him the caſe of the privy council, as if your Majeſty ſhould be pleaſed to command any of them to deliver their opinion apart and in private; whether it were a good anſwer to deny it, otherwiſe than if it were propounded at the table. To this he ſaid, that the caſes were not alike, becauſe this concern'd life. To which I replied, that queſtions of eſtate might concern thouſands of lives, and many things more precious than the life of a particular; as war, and peace, and the like.

To

To conclude, his lordſhip, *tanquam exitum quaerens*, deſired me for the time to leave with him the papers, without preſſing him to conſent to deliver a private opinion till he had peruſed them. I ſaid I would; and the more willingly, becauſe I thought his lordſhip, upon due conſideration of the papers, would find the caſe to be ſo clear a caſe of treaſon, as he would make no difficulty to deliver his opinion in private; and ſo I was perſuaded of the reſt of the judges of the King's-bench, who likewiſe (as I partly underſtood) made no ſcruple to deliver their opinion in private: Whereunto he ſaid, (which I noted well) that his brethren were wiſe men, and that they might make a ſhew as if they would give an opinion as was required; but the end would be, that it would come to this: They would ſay, they doubted of it, and ſo pray advice with the reſt. But to this I anſwered, that I was ſorry to hear him ſay ſo much, leſt, if it came ſo to paſs, ſome that loved him not might make a conſtruction, that that which he had foretold, he had wrought. Thus your Majeſty ſees, that as *Solomon* ſaith, *Greſſus nolentis tanquam in ſepi ſpinarum*, it catcheth upon every thing.

The later meeting is yet of more importance; for then coming armed with divers precedents, I thought to ſet in with the beſt ſtrength I could, and ſaid, that before I deſcended to the record, I would break the caſe to him thus: That it was true we were to proceed upon the ancient ſtatute of King *Edward* the third, becauſe other temporary ſtatutes were gone; and therefore it muſt be ſaid in the indictment, *Imaginatus eſt & compaſſavit mortem & finalem deſtructionem domini Regis:* then muſt the particular treaſons follow in this manner, *viz. Et quod ad perimplendum nefandum propoſitum ſuum, compoſuit & conſcripſit quendam deteſtabilem & venenoſum libellum, ſive ſcriptum, in quo, inter alia proditoria, continetur, &c.* And then the principal paſſages of treaſon, taken forth of the papers, are to be entered *in haec verba*; and with a concluſion in the end, *Ad intentionem quod ligeus populus & veri ſubditi domini Regis cordialem ſuum amorem a domino Rege retraherent, & ipſum dominum Regem relinquerent, & guerram & inſurrectionem contra eum levarent & facerent, &c.* I have in this form followed the ancient ſtyle of the indictments for brevity ſake, tho' when we come to the buſineſs itſelf, we ſhall enlarge it according to the uſe of the later times. This I repreſented to him, (being a thing he is well acquainted with,) that he might perceive the platform of that was intended, without any miſtaking or obſcurity. But then I fell to the matter itſelf, to lock him in as much as I could, *viz.*

That there be four means or manners, whereby the death of the King is compaſſed and imagined.

The firſt, by ſome particular fact or plot.

The ſecond, by diſabling his title; as by affirming, that he is not lawful King; or that another ought to be King; or that he is an uſurper; or a baſtard; or the like.

The third, by ſubjecting his title to the pope; and thereby making him of an abſolute King a conditional King.

The fourth, by diſabling his regiment, and making him appear to be incapable or indign to reign.

These things I relate to your Majeſty in ſum, as is fit; which, when I opened to my lord, I did inſiſt a little more upon, with more efficacy and edge, and authority of law and record than I can now expreſs.

Then I placed *Peacham*'s treaſon within the laſt diviſion, agreeable to divers precedents, whereof I had the records ready; and concluded, that your Majeſty's ſafety and life and authority was thus by law inſconſed and quartered;

and that it was in vain to fortify on three of the ſides, and ſo leave you open on the fourth.

It is true, he heard me in a grave faſhion more than accuſtomed, and took a pen and took notes of my diviſions; and when he read the precedents and records, would ſay, This you mean falleth within your firſt, or your ſecond, diviſion. In the end, I expreſsly demanded his opinion, as that whereto both he and I was enjoined. But he deſired me to leave the precedents with him, that he might adviſe upon them. I told him, the reſt of my fellows ſhould diſpatch their part, and I ſhould be behind with mine; which I perſuaded myſelf your Majeſty would impute rather to his backwardneſs than my negligence. He ſaid, as ſoon as I ſhould underſtand that the reſt were ready, he would not be long after with his opinion.

For Mr. *St. John*, your Majeſty knoweth, the day draweth on; and my lord chancellor's recovery the ſeaſon and his age promiſing not to be too haſty. I ſpake with him on ſunday, at what time I found him in bed, but his ſpirits ſtrong, and not ſpent or wearied, and ſpake wholly of your buſineſs, leading me from one matter to another; and wiſhed and ſeemed to hope, that he might attend the day for *O. S.* and it were (as he ſaid) to be his laſt work to conclude his ſervices, and expreſs his affection towards your Majeſty. I preſumed to ſay to him, that I knew your Majeſty would be exceeding deſirous of his being preſent that day, ſo as that it might be without prejudice to his continuance; but that otherwiſe your Majeſty eſteemed a ſervant more than a ſervice, eſpecially ſuch a ſervant. Surely in mine opinion your Majeſty were better put off the day than want his preſence, conſidering the cauſe of the putting off is ſo notorious; and then the capital and the criminal may come together the next term.

I have not been unprofitable in helping to diſcover and examine within theſe few days a late patent, by ſurreption obtained from your Majeſty, of the greateſt foreſt in *England* worth 30,000 *l.* under colour of a defective title for a matter of 400 *l.* The perſon muſt be named, becauſe the patent muſt be queſtioned. It is a great perſon, my lord of *Shrewſbury*; or rather, (as I think) a greater than he, which is my lady of * *Shrewsbury*. But I humbly

* That ſhe was a woman of intrigue, and as *Camden* ſays in his annals of King *James*, *rebus turbandis nata*, will appear from her conduct relating to the King and her kinſwoman the lady *Arabella*: For having been the great inſtrument of her marriage with Sir *William Seymour*, afterwards earl and marquis of *Hertford*, and of procuring her eſcape from the tower; ſhe was convened before the privy council, and for refuſing to give any anſwer in a matter which ſo nearly concerned the ſtate, ſhe was fined in the ſtar-chamber: and the charge which was then given againſt her printed in the *Cabala*, p. 369, was I doubt not (ſays Mr. *Stephens*) made by Sir *Francis Bacon*. But as if this was not a ſufficient warning, ſhe afterwards reported that the lady *Arabella* left a child by her huſband; for which and her repeated obſtinacy ſhe incurred a greater cenſure in the ſame court. That charge, whether Sir *Francis Bacon*'s or not, is as follows.

Your lordſhips do obſerve the nature of this charge: My lady of *Shrewſbury*, a lady wiſe, and that ought to know what duty requireth, is charged to have refuſed, and to have perſiſted in refuſal to anſwer, and to be examined in a high cauſe of ſtate; being examined by the council-table, which is a repreſentative body of the King. The nature of the cauſe, upon which ſhe was examined is an eſſential point which doth aggravate and increaſe this contempt and preſumption; and therefore of neceſſity with that we muſt begin.

How graciouſly and parent-like his Majeſty uſed the lady *Arabella* before ſhe gave him cauſe of indignation, the world knoweth.

My lady notwithſtanding, extremely ill-adviſed, tranſacted the moſt weighty and binding part and action of her life, which is her marriage, without acquainting his Majeſty; which had been a neglect even to a mean parent: but being to our Sovereign, and ſhe ſtanding ſo near to his Majeſty as ſhe doth, and then chuſing ſuch a condition as it pleaſed her to chuſe, all parties laid together, how dangerous it was my lady might have read it in the fortune of that houſe wherewith ſhe is matched; for it was not unlike the caſe of Mr. *Seymour*'s grandmother.

The King nevertheleſs ſo remember'd he was a King, as he forgot not he was a kinſman, and placed her only *ſub libera cuſtodia*.

But

humbly pray your Majeſty to know this firſt from my Lord Treaſurer, who methinks groweth even ſtudious in your buſineſs. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Jan. 31. 1614. FR. BACON.

The rather, in regard of Mr. *Murray*'s abſence, I humbly pray your Majeſty to have a little regard to this letter.

But now did my lady accumulate and heap up this offence with a far greater than the former, by ſeeking to withdraw herſelf out of the King's power into foreign parts.

That this flight or eſcape into foreign parts might have been ſeed of trouble to this ſtate, is a matter whereof the conceit of a vulgar perſon is not uncapable.

For although my lady ſhould have put on a mind to continue her loyalty, as nature and duty did bind her; yet when ſhe was in another ſphere, ſhe muſt have moved in the motion of that orb, and not of the planet itſelf: and God forbid the King's felicity ſhould be ſo little, as he ſhould not have envy and enviers enough in foreign parts.

It is true, if any foreigner had wrought upon this occaſion, I do not doubt but the Intent would have been, as the prophet ſaith, *They have conceived miſchief, and brought forth a vain thing.* But yet your lordſhips know that it is wiſdom in Princes, and it is a watch they owe to themſelves and to their people, to ſtop the beginnings of evils, and not to deſpiſe them. *Seneca* ſaith well, *Non jam amplius levia ſunt pericula, ſi levia videantur*; dangers ceaſe to be light, becauſe by deſpiſing they grow and gather ſtrength.

And accordingly hath been the practice both of the wiſeſt and ſtouteſt princes to hold, for matter pregnant of peril, to have any near them in blood to fly into foreign parts. Wherein I will not wander; but take the example of King *Henry* the ſeventh, a Prince not unfit to be parallel'd with his Majeſty; I mean not the particular of *Perkin Warbeck*, for he was but an idol or a diſguiſe; but the example I mean, is that of the earl of *Suffolk*, whom the King extorted from *Philip* of *Auſtria*. The ſtory is memorable; That *Philip*, after the death of *Iſabella*, coming to take poſſeſſion of his kingdom of *Caſtile* (which was but matrimonial to his father-in-law *Ferdinando* of *Aragon*) was caſt by weather upon the coaſt of * *Weymouth*, where the *Italian* ſtory ſaith, King *Henry* uſed him in all things elſe as a Prince, but in one thing as a priſoner; for he forced upon him a promiſe to reſtore the earl of *Suffolk* that was fled into *Flanders*; and yet this I note was in the 21ſt year of his reign, when the King had a goodly Prince at man's eſtate, beſides his daughters, nay, and the whole line of *Clarence* nearer in title; for that earl of *Suffolk* was deſcended of a ſiſter of *Edward* the fourth, ſo far off did that King take his aim. To this action of ſo deep conſequence, it appeareth you, my lady of *Shrewſbury*, were privy, not upon foreign ſuſpicions or ſtrained inferences, but upon vehement preſumptions, now clear and particular teſtimony, as hath been opened to you: ſo as the King had not only reaſon to examine you upon it, but to have proceeded with you upon it as for a great contempt; which if it be reſerved for the preſent, your ladyſhip is to underſtand it aright, that it is not defect of proof, but abundance of grace that is the cauſe of this proceeding; and your ladyſhip ſhall do well to ſee into what danger you have brought yourſelf: All offences conſiſt of the fact which is open, and the intent which is ſecret; this fact of conſpiring in the flight of this lady may bear a hard and gentler conſtruction; if upon overmuch affection to your kinſwoman, gentler; if upon practice or other end, harder; you muſt take heed how you enter into ſuch actions, whereof if the hidden part be drawn unto that which is open, it may be your overthrow; which I ſpeak not by way of charge, but by way of caution.

*See Vol. III. p. 498.

For that which you are properly charged with, you muſt know that all ſubjects without diſtinction of degrees, owe to the King tribute and ſervice, not only of their deed and hand, but of their knowledge and diſcovery.

If there be any thing that imports the King's ſervice, they ought themſelves undemanded to impart it; much more if they be called and examined; whether it be of their own fact or of another's, they ought to make direct anſwer: neither was there ever any ſubject brought into cauſes of eſtate to trial judicial, but firſt he paſſed examination; for examination is the entrance of juſtice in criminal cauſes; it is one of the eyes of the King's politick body; there are but two, information and examination; it may not be endured that one of the lights be put out by your example.

Your excuſes are not worthy your own judgment; raſh vows of lawful things are to be kept, but unlawful vows not; your own divines will tell you ſo. For your examples, they are ſome erroneous traditions. My lord of *Pembroke* ſpake ſomewhat that he was unlettered, and it was but when he was examined by one private counſellor, to whom he took exception: That of my lord *Lumley* is a fiction; the pre-eminences of nobility I would hold with to the laſt grain; but every day's experience is to the contrary: Nay, you may learn duty of my lady *Arabella* herſelf, a lady of the blood, of an higher rank than yourſelf, who declining (and yet that but by requeſt neither to declare of your fact) yieldeth ingenuouſly to be examined of her own. I do not doubt but by this time you ſee both your own error, and the King's grace in proceeding with you in this manner. *N. B.* See the proclamation for apprehending the lady *Arabella*, and *William Seymour*, ſecond ſon of lord *Beauchamp*, dated *June* 4. 1611, who had made their eſcape the day before, *Rymer* XVI. p. 710.

CXV. To

CXV. To the KING, touching my Lord Chancellor's amendment, &c.

It may pleaſe your excellent Majeſty,

MY Lord Chancellor ſent for me to ſpeak with me this morning, about eight of the clock. I perceive he hath now that *ſignum ſanitatis*, as to feel better his former weakneſs: for it is true, I did a little miſtruſt that it was but a boutade of deſire and good ſpirit, when he promis'd himſelf ſtrength for Friday, tho' I was won and carried with it. But now I find him well inclined to uſe (ſhould I ſay) your liberty, or rather your interdict, ſignified by Mr. Secretary from your Majeſty. His lordſhip ſhewed me alſo your own letter, whereof he had told me before, but had not ſhewed it me. What ſhall I ſay? I do much admire your goodneſs for writing ſuch a letter at ſuch a time.

HE had ſent alſo to my Lord Treaſurer, to deſire him to come to him about that time. His lordſhip came; and not to trouble your Majeſty with circumſtances, both their lordſhips concluded, myſelf preſent and concurring; that it could be no prejudice to your Majeſty's ſervice to put off the day for † Mr. *St. John* till the next term: the rather, becauſe there are ſeven of your privy council, which are at leaſt *numerus* and part of the court, which are by infirmity like to be abſent; that is, my Lord Chancellor, my Lord Admiral, my Lord of *Shrewsbury*, my Lord of *Exeter*, my Lord *Zouch*, my Lord *Stanhope*, and Mr. Chancellor of the duchy; wherefore they agreed to hold a council to-morrow in the afternoon for that purpoſe.

IT is true, that I was always of opinion that it was no time loſt; and I do think ſo the rather, becauſe I could be content, that the matter of *Peacham* were firſt ſettled and put to a point. For there be perchance, that would make the example upon Mr. *St. John* to ſtand for all. For *Peacham*, I expect ſome account from my fellows this day; if it ſhould fall out otherwiſe, then I hope it may not be left ſo. Your Majeſty, in your laſt letter, very wiſely put in a disjunctive, that the judges ſhould deliver an opinion privately, either to my Lord Chancellor or to ourſelves diſtributed: His ſickneſs made the later way to be taken; but the other may be reſerved with ſome accommodating when we ſee the ſucceſs of the former.

I AM appointed this day to attend my Lord Treaſurer for a propoſition of raiſing profit and revenue by infranchiſing copyholders. I am right glad to ſee the patrimonial part of your revenue well look'd into, as well as the fiſcal: And I hope it will ſo be in other parts as well as this. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Feb. 7. 1614. FR. BACON.

† In 1614, a benevolence was ſet on foot. Mr. *Oliver St. John* gave his opinion publickly, that it was againſt law, reaſon, and religion; for which he was condemned in a fine of five thouſand pounds, and to be impriſoned during the King's pleaſure.

CXVI. To the KING, concerning OWEN's cauſe, &c.

It may pleaſe your excellent Majeſty,

MY ſelf, with the reſt of your council learned, conferred with my Lord *Coke*, and the reſt of the judges of the King's bench only, being met at

at my lord's chamber, concerning the buſineſs of *Owen*. For although it be true, that your Majeſty in your letter did mention that the ſame courſe might be held in the taking of opinions apart in this, which was preſcribed and uſed in *Peacham*'s cauſe; yet both my lords of the council, and we amongſt our ſelves, holding it, in a caſe ſo clear, not needful; but rather that it would import a diffidence in us, and deprive us of the means to debate it with the judges (if cauſe were) more ſtrongly, (which is ſomewhat) we thought beſt rather to uſe this form.

The judges deſired us to leave the examinations and papers with them for ſome little time, to conſider, (which is a thing they uſe;) but, I conceive, there will be no manner of queſtion made of it. My Lord Chief Juſtice, to ſhew forwardneſs (as I interpret it) ſhewed us paſſages of *Suarez* and others, thereby to prove, that though your Majeſty ſtood not excommunicate by particular ſentence, yet by the general bulls of *coena Domini*, and others, you were upon the matter excommunicate; and therefore, that the treaſon was as *de praeſenti*. But I that foreſee that if that courſe ſhould be held, when it cometh to a publick day, to diſſeminate to the vulgar an opinion, that your Majeſty's caſe is all one, as if you were *de facto* particularly and expreſly *excommunicate*; it would but increaſe the danger of your perſon with thoſe that are deſperate papiſts; and that it is needleſs; commended my lord's diligence, but withal put it by; and fell upon the other courſe, (which is the true way;) that is, that whoſoever ſhall affirm, *in diem*, or *ſub conditione*, that your Majeſty may be deſtroyed, is a traytor *de praeſenti*; for that he maketh you but tenant for life, at the will of another. And I put the Duke of *Buckingham*'s caſe, who ſaid, that if the King cauſed him to be arreſted of treaſon, he would ſtab him; and the caſe of the impoſtreſs *Elizabeth Barton*, that ſaid, that if King *Henry* the eighth took not his wife again, *Katharine* dowager, he ſhould be no longer King; and the like.

It may be theſe particulars are not worth the relating: but becauſe I find nothing in the world ſo important to your ſervice, as to have you throughly informed, (the ability of your direction conſidered) it maketh me thus to do; moſt humbly praying your Majeſty to admoniſh me, if I be over-troubleſome.

For *Peacham*, the reſt of my fellows are ready to make their report to your Majeſty, at ſuch time, and in ſuch manner, as your Majeſty ſhall require it. My ſelf yeſterday took my Lord *Coke* aſide, after the reſt were gone, and told him all the reſt were ready, and I was now to enquire his lordſhip's opinion according to my commiſſion. He ſaid I ſhould have it; and repeated that twice or thrice, as thinking he had gone too far in that kind of negative, (to deliver any opinion apart) before; and ſaid, he would tell it me within a very ſhort time, though he were not that inſtant ready. I have toſſed this buſineſs *in omnes partes*, whereof I will give your Majeſty knowledge when time ſerveth. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Febr. 11, 1614. Fr. Bacon.

CXVII. To the KING.

It may pleaſe your excellent Majeſty,

I Send your Majeſty encloſed, my Lord *Coke*'s anſwers; I will not call them reſcripts, much leſs oracles. They are of his own hand, and offered to me as they are in writing; though I am glad of it for mine own diſcharge. I

thought it my duty, as ſoon as I received them, inſtantly to ſend them to your Majeſty; and forbear, for the preſent, to ſpeak farther of them. I, for my part, (though this *Muſcovia* weather be a little too hard for my conſtitution) was ready to have waited upon your Majeſty this day, all reſpects ſet aſide; but my Lord Treaſurer, in reſpect of the ſeaſon and much other buſineſs, was willing to ſave me. I will only conclude touching theſe papers with a text, divided I cannot ſay; *oportet iſthaec fieri*; but I may ſay, *ſinis autem nondum*. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

14 Feb. 1614. FR. BACON.

CXVIII. To the KING, of revenue and profit.

It may pleaſe your Majeſty,

I MAY remember what *Tacitus* ſaith, by occaſion that *Tiberius* was often and long abſent from *Rome*. *In urbe, & parva & magna negotia imperatorem ſimul premunt:* but ſaith he, *in receſſu, dimiſſis rebus minoris momenti, ſummae rerum magnarum magis agitantur.* This maketh me think it ſhall be no incivility to trouble your Majeſty with buſineſs, during your abode from *London*; knowing that your Majeſty's meditations are the principal wheel of your eſtate; and being warranted from a former commandment which I received from you.

I DO now only ſend your Majeſty theſe papers encloſed, becauſe I do greatly deſire, ſo far forth to preſerve my credit with you, as thus, that whereas lately, (perhaps out of too much deſire, which induceth too much belief,) I was bold to ſay, that I thought it as eaſy for your Majeſty to come out of want, as to go forth of your gallery; your Majeſty would not take me for a dreamer, or a projector; I ſend your Majeſty therefore ſome grounds of my hopes. And for that paper which I have gathered of increaſements ſperate, I beſeech you to give me leave to think, that if any of the particulars do fail, it will be rather for want of workmanſhip in thoſe that ſhall deal in them, than want of materials in the things themſelves. The other paper hath many diſcarding cards; and I ſend it chiefly, that your Majeſty may be the leſs ſurprized by projectors; who pretend ſometimes great diſcoveries and inventions in things, that have been propounded, and, perhaps, after a better faſhion, long ſince. God Almighty preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

25 April 1614. FR. BACON.

CXIX. To the KING.

It may pleaſe your excellent Majeſty,

MR. *St. John* his day is paſt, and well paſt. I hold it to be *Janus bifrons*; it hath a good aſpect to that which is paſt, and to the future; and doth both ſatisfy and prepare. All did well; my Lord Chief Juſtice delivered the law for the benevolence ſtrongly; I would he had done it timely.

* Mr.

* Mr. Chancellor of the exchequer ſpake finely, ſomewhat after the manner of my late || Lord Privy Seal; not all out ſo ſharply, but as elegantly. Sir *Thomas Lake* (who is alſo new in that court) did very well, familiarly and counſellor-like †. My lord of *Pembroke* (who is likewiſe a ſtranger there,) did extraordinary well, and became himſelf well, and had an evident applauſe ‡. I meant well alſo; and becauſe my information was the ground; having ſpoken out of a few heads which I had gathered, (for I ſeldom do more,) || I ſet down, as ſoon as I came home, curſorily, a frame of that I had ſaid; though I perſuade my ſelf I ſpake it with more life. I have ſent it to Mr. *Murray* ſealed; if your Majeſty have ſo much idle time to look upon it, it may give ſome light of the day's work: but I moſt humbly pray your Majeſty to pardon the errors. God preſerve you ever.

|| Late Earl of *Northampton.*

|| Printed P. 314. of this Vol.

Your Majeſty's moſt humble ſubject, and devoted ſervant,

April 29. 1615. FR. BACON.

* The Chancellor of the exchequer here meant was Sir *Fulke Greville*, who being early initiated into the court of Queen *Elizabeth*, became a polite and fine gentleman; and in the 18th of King *James* was created Lord *Brooke*. He erected a noble monument for himſelf on the north-ſide of *Warwick* church (which hath eſcap'd the late deſolation) with this well-known inſcription, *Fulke Greville*, ſervant to Queen *Elizabeth*, counſellor to King *James*, and friend to Sir *Philip Sidney*. Nor is he leſs remembered by the monument he has left in his writings and poems, chiefly compoſed in his youth, and in familiar exerciſes with the gentleman I have before-mentioned. *Stephens.*

† Sir *Thomas Lake* was about this time made one of the principal ſecretaries of ſtate, as he had been formerly *Latin* ſecretary to Queen *Elizabeth*, and before that time bred under Sir *Francis Walſingham*. But in the year 1618, falling into the King's diſpleaſure, and being engaged in the quarrels of his wife and daughter the Lady *Roos*, with the Counteſs of *Exeter*; he was at firſt ſuſpended from the execution of his place, and afterwards removed, and deeply cenſured and fined in the ſtar-chamber; although it is ſaid the King then gave him in open court this publick eulogy, that he was a miniſter of ſtate fit to ſerve the greateſt prince in *Europe*. Whilſt this ſtorm was hanging over his head, he writ many letters to the King, and Marquiſs of *Buckingham*, which I have ſeen, complaining of his misfortune, that his ruin was likely to proceed from the aſſiſtance he gave to his neareſt relations. *Stephens.*

‡ *William* Earl of *Pembroke*, ſon to *Henry Herbert* Earl of *Pembroke*, Lord Preſident of the council in the marches of *Wales*, by *Mary* his wife, a lady in whom the muſes and graces ſeem'd to meet; whoſe very letters, in the judgment of one who ſaw many of them, declared her to be miſtreſs of a pen not inferior to that of her brother's, the admirable Sir *Philip Sidney*, and to whom he addreſs'd his *Arcadia*. Nor did this gentleman degenerate from their wit and ſpirit, as his own poems, his great patronage of learned men, and reſolute oppoſition to the *Spaniſh* match, did, among other inſtances, fully prove. In the year 1616, he was made Lord Chamberlain, and choſen Chancellor of the univerſity of *Oxford*. He died ſuddenly on the 10th of *April* 1630, having juſt compleated fifty years: but his only ſon deceaſing a child before him, his eſtate and honours deſcended upon the younger brother, *Philip* Earl of *Montgomery*, the lineal anceſtor of the preſent noble and learned Earl. *Stephens.*

CXX. To the KING, concerning the new company.

It may pleaſe your moſt excellent Majeſty,

YOUR Majeſty ſhall ſhortly receive the bill for the incorporation of the new company *, together with a bill for the privy ſeal, being a dependency

* Among other projects for ſupplying his Majeſty with money, after his abrupt diſſolution of the parliament, there was one propoſed through the Lord Treaſurer's means by Sir *William Cockaine*, an alderman of *London*. For the ſociety or fellowſhip of *Merchants Adventurers*, having enjoy'd by licence from the crown a power of exporting yearly ſeveral thouſands of *Engliſh* cloaths *undyed*, it was imagin'd that the King would not only receive an increaſe in his cuſtoms by the importation of materials neceſſary for *dying*, but the nation a conſiderable advantage in imploying the ſubjects, and improving the manufacture to its utmoſt before it was exported. This propoſition being beſides attended with the offer of an immediate profit to his Majeſty, was ſoon embraced; the charter granted to the *Merchants Adventurers* recalled, and Sir *William Cockaine* and ſeveral other traders incorporated upon certain conditions, as appears in part from this letter; tho' ſome other letters in the ſame and the following years inform us, what difficulties the King and Council, and indeed the whole kingdom ſuſtain'd thereby. For the trading towns in the *Low Countries* and in *Germany*, which were the great mart and ſtaple of theſe commodities, perceiving themſelves in danger of loſing the profit, which they had long reaped by dying and dreſſing great quantities of *Engliſh* cloth, the *Dutch* prohibited the whole com-

dency thereof: for this morning I ſubſcribed and docketted them both. I think it therefore now time to repreſent to your Majeſty's high wiſdom that which I conceive, and have had long in my mind concerning your Majeſty's ſervice, and honourable profit in this buſineſs.

THIS project which hath proceeded from a worthy ſervice of the Lord Treaſurer, I have, from the beginning, conſtantly affected; as may well appear by my ſundry labours from time to time in the ſame: for I hold it a worthy character of your Majeſty's reign and times; inſomuch, as though your Majeſty might have at this time (as is ſpoken) a great annual benefit for the quitting of it; yet I ſhall never be the man that ſhould wiſh your Majeſty to deprive your ſelf of that beatitude; *Beatius eſt dare, quam accipere*, in this cauſe; but to ſacrifice your profit (though as your Majeſty's ſtate is, it be precious to you,) to ſo great a good of your kingdom: although this project is not without a profit immediate unto you, by the encreaſing of cuſtoms upon the materials of dyes.

BUT here is the caſe: the new company by this patent and privy ſeal, are to have two things wholly diverſe from the firſt intention; or rather, *ex diametro*, oppoſite unto the ſame; which nevertheleſs they muſt of neceſſity have, or elſe the work is overthrown: ſo as I may call them *mala neceſſaria*, but yet withal temporary. For as men make war to have peace; ſo theſe merchants muſt have licence for whites, to the end to baniſh whites; and they muſt have licence to uſe tenters, to the end to baniſh tenters.

THIS is therefore that I ſay; your Majeſty upon theſe two points, may juſtly, and with honour, and with preſervation of your firſt intention inviolate, demand profit in the interim, as long as theſe unnatural points continue, and then to ceaſe. For your Majeſty may be pleaſed to obſerve, that they are to have all the old company's profit by the trade of whites; they are again to have, upon the proportion of cloaths which they ſhall vent dyed and dreſſed, the *Flemmings* profit under the tenter. Now then I ſay, as it had been too good huſbandry for a King to have taken profit of them, if the project could have been effected at once, (as was voiced;) ſo on the other ſide it might be, perchance, too little huſbandry and providence to take nothing of them, for that which is merely lucrative to them in the mean time. Nay, I ſay farther, this will greatly conduce, and be a kind of ſecurity to the end deſired. For I always feared, and do yet fear, that when men, by condition merchants, though never ſo honeſt, have gotten into their hands the trade of whites, and the diſpenſation to tenter, wherein they ſhall reap profit, for that which they never ſowed; but have gotten themſelves certainties, in reſpect of the ſtate's hopes: they are like enough to ſleep upon this as upon a pillow, and to make no haſte to go on with the reſt. And though it may be ſaid, that this is a thing will eaſily appear to the ſtate, yet (no doubt) means may be deviſed and found to draw the buſineſs in length. So that I conclude, that if your Majeſty take a profit of them in the *interim*, (conſi-

commodity; and the materials being either dearer here, or the manufacturers leſs skill'd in fixing of the colours, the vent of the cloth was ſoon at a ſtand; upon which the clamour of the countries extended it ſelf to the court. So that after ſeveral attempts to carry on the deſign, Sir *Fr. Bacon* finding the new company variable in themſelves, and not able to comply with their propoſals, but making new and ſpringing demands, and that the whole matter was more and more perplex'd, ſent on the 14th of *October* 1616, a letter to the Lord *Villiers*, incloſing his reaſons why the new company was no longer to be truſted, but the old company to be treated with and revived. Accordingly, purſuant to a power of revocation contain'd in the new charter, it was recall'd, and a proclamation publiſh'd for reſtoring the old company, dated *Aug.* 12 1617; and ſoon after another charter granted them upon their payment of 50,000 *l.* Stephens's *Introduct. p.* 38, 39.

dering you refuſe profit from the old company,) it will be both ſpur and bridle to them, to make them pace aright to your Majeſty's end.

THIS in all humbleneſs, according to my avowed care and fidelity, being no man's man but your Majeſty's, I preſent, leave, and ſubmit to your Majeſty's better judgment; and I could wiſh your Majeſty would ſpeak with Sir *Thomas Lake* in it; who, beſides his good habit which he hath in buſineſs, beareth (methinks) an indifferent hand in this particular; and (if it pleaſe your Majeſty,) it may proceed as from your ſelf, and not as a motion or obſervation of mine.

Your Majeſty need not in this to be ſtraitened in time; as if this muſt be demanded or treated before you ſign their bill. For I foreſeeing this, and foreſeeing that many things might fall out which I could not foreſee, have handled it ſo, as with their good contentment, there is a power of revocation inſerted into their patent. And ſo commending your Majeſty to God's bleſſed and precious cuſtody; I reſt,

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Aug. 12. 1615. FR. BACON.

CXXI. To Sir GEORGE VILLIERS, about *Roper*'s place.

SIR,

SENDING to the King upon occaſion, I would not fail to ſalute you by my letter; which, that it may be more than two lines, I add this for news; that as I was ſitting by my Lord Chief Juſtice, upon the commiſſion for the indicting of the great perſon; one of the judges aſked him, whether *Roper* were dead? He ſaid, he for his part knew not; another of the judges anſwered, it ſhould concern you, my lord, to know it. Whereupon he turned his ſpeech to me, and ſaid, No, Mr. Attorney, I will not wreſtle now in my later times. My lord, ſaid I, you ſpeak like a wiſe man. Well, ſaith he, they have had no luck with it that have had it. I ſaid again, thoſe days be paſt. Here you have the dialogue to make you merry. But in ſadneſs, I was glad to perceive he meant not to conteſt. I can but honour and love you, and reſt,

Your aſſured friend and ſervant,

Jan. 22. 1615. FR. BACON.

CXXII. To the KING, againſt the new company.

It may pleaſe your excellent Majeſty,

I SPAKE yeſterday long with my Lord *Coke*; and for the *rege inconſulto*, I conceive by him it will be, *an amplius deliberandum cenſeo*, (as I thought at firſt;) ſo as for the preſent your Majeſty ſhall not need to renew your commandment of ſtay. I ſpake with him alſo about ſome propoſitions concerning your Majeſty's caſual revenue; wherein I found him to conſent with me fully; aſſuming, nevertheleſs, that he had thought of them before; but it is one thing to have the vapour of a thought, another to digeſt buſineſs aright. He, on his part, imparted to me divers things of great weight, concerning the reparation of your Majeſty's means and finances, which I heard gladly; inſomuch as he perceiving the ſame, I think was the readier to open himſelf to me in one circumſtance, which he did much inculcate. I concur fully

with him, that they are to be held ſecret; for I never ſaw but that buſineſs is like a child, which is framed inviſibly in the womb; and if it come forth too ſoon, it will be abortive. I know, in moſt of them, the proſecution muſt reſt much upon my ſelf. But I that had the power to prevail in the farmer's caſe of the *French* wines, without the help of my Lord *Coke*, ſhall be better able to go through theſe with his help, the ground being no leſs juſt. And this I ſhall ever add of mine own, that I ſhall ever reſpect your Majeſty's honour no leſs than your profit; and ſhall alſo take care, according to my penſive manner, that that which is good for the preſent, have not in it hidden ſeeds of future inconveniences.

The matter of the new company was referred to me by the lords of the privy council; wherein, after ſome private ſpeech with Sir *Lionel Cranfield*, I made that report which I held moſt agreeable to truth, and your Majeſty's ſervice. If this new company break, it muſt either be put upon the patent, or upon the order made by themſelves. For the patent, I ſatisfied the board that there was no tittle in it which was not either *verbatim* in the patent of the old company, or by ſpecial warrant from the table inſerted. My Lord *Coke*, with much reſpect to me, acknowledged, but diſliked the old patent in it ſelf, and diſclaimed his being at the table when the additions were allowed. But, in my opinion, (howſoever my Lord *Coke*, to magnify his ſcience in law, draweth every thing, though ſometimes improperly and unſeaſonably, to that kind of queſtion;) it is not convenient to break the buſineſs upon thoſe points. For conſidering they were but clauſes that were in the former patents, and in many other patents of companies; and that the additions likewiſe paſſed the allowance of the table, it will be but clamoured, and perhaps conceived, that to quarrel them now, is but an occaſion taken; and that the times are changed, rather than the matter. But that which preſerveth entire your Majeſty's honour, and the conſtancy of your proceedings, is to put the breach upon their orders.

For this light I gave in my report, which the table readily apprehended, and much approved; that if the table reject their orders as unlawful and unjuſt, it doth free you from their contract: for whoſoever contracteth or undertaketh any thing, is always underſtood to perform it by lawful means; ſo as they have plainly abuſed the ſtate, if that which they have undertaken be either impoſſible or unjuſt.

I am bold to preſent this conſideration to that excellent faculty of your Majeſty's judgment; becauſe I think it importeth that future good which may grow to your Majeſty in the cloſe of this buſineſs; that the falling off be without all exception. God have you in his precious cuſtody.

Your Majeſty's moſt humble and bounden ſubject and ſervant,

Feb. 3. 1615. Fr. Bacon.

CXXIII. To the King, touching the Chancellor's ſickneſs.

It may pleaſe your moſt excellent Majeſty,

I am glad to underſtand by *Murray*, that your Majeſty accepteth well of my poor endeavours, in opening unto you the paſſages of your ſervice; that buſineſs may come the leſs crude, and the more prepared to your royal judgment; the perfection whereof, as I cannot expect they ſhould ſatisfy in

every particular; ſo I hope, through my aſſiduity there will reſult a good total.

My Lord Chancellor's ſickneſs falleth out, *duro tempore*. I have always known him a wiſe man, and of juſt elevation for monarchy; but your Majeſty's ſervice muſt not be mortal. And if you loſe him, as your Majeſty hath now of late purchaſed many hearts by depreſſing the wicked; ſo God doth miniſter unto you a counterpart to do the like, by raiſing the honeſt. God evermore preſerve your Majeſty.

Your Majeſty's moſt humble ſubject and bounden ſervant,

Feb. 9. 1615. Fr. Bacon.

CXXIV. To the KING.

It may pleaſe your moſt excellent Majeſty,

YOUR worthy Chancellor*, I fear, goeth his laſt day. God hath hitherto uſed to weed out ſuch ſervants as grew not fit for your Majeſty; but now he hath gathered to himſelf one of the choicer plants, a true *ſage* or *ſalvia*, out of your garden; but your Majeſty's ſervice muſt not be mortal. * Chanc. Egerton.

Upon this heavy accident I pray your Majeſty, in all humbleneſs and ſincerity, to give me leave to uſe a few words: I muſt never forget, when I moved your Majeſty for the attorney's place, that it was your own ſole act, and not my Lord of *Somerſet*'s; who when he knew your Majeſty had reſolved it, thruſt himſelf into the buſineſs to gain thanks; and therefore I have no reaſon to pray to ſaints.

I shall now again make oblation to your Majeſty, firſt of my heart, then of my ſervice; thirdly of my place of Attorney (which I think is honeſtly worth 6000 *l. per annum*;) and fourthly, of my place in the ſtar-chamber, which is worth 1600 *l. per annum*; and with the favour and countenance of a Chancellor much more. I hope I may be acquitted of preſumption if I think of it, both becauſe my father had the place, which is ſome civil inducement to my deſire; (and I pray God your Majeſty may have twenty no worſe years in your greatneſs, than Queen *Elizabeth* had in her model, after my father's placing;) and chiefly, becauſe the chancellor's place, after it went to the law, was ever conferred upon ſome of the learned council, and never upon a judge. For *Audeley* was raiſed from King's ſerjeant; my father from attorney of the wards; *Bromley* from ſollicitor; *Puckering* from Queen's ſerjeant; *Egerton* from maſter of the rolls, having newly left the attorney's place. Now I beſeech your Majeſty let me put you the preſent caſe truly. If you take my Lord *Coke*, this will follow; firſt, your Majeſty ſhall put an over-ruling nature into an over-ruling place, which may breed an extreme; next, you ſhall blunt his induſtries in matter of finances, which ſeemeth to aim at another place; and laſtly, popular men are no ſure mounters for your Majeſty's ſaddle. If you take my Lord *Hobart*, you ſhall have a judge at the upper end of your council-board, and another at the lower end; whereby your Majeſty will find your prerogative pent: For tho' there ſhould be emulation between them, yet as legiſts they will agree in magnifying that wherein they are beſt; he is no ſtateſman, but an oeconomiſt wholly for himſelf; ſo as your Majeſty (more than an outward form) will find little help in him for the buſineſs. If you take my Lord of *Canterbury*, I will ſay no more, but the chancellor's place requires a whole man; and to have both juriſdictions, ſpiritual and temporal, in that height is fit but for a King.

For

For myſelf, I can only preſent your Majeſty with *gloria in obſequio**; yet I dare promiſe, that if I ſit in that place, your buſineſs ſhall not make ſuch ſhort turns upon you, as it doth; but when a direction is once given, it ſhall be purſued and performed, and your Majeſty ſhall only be troubled with the true care of a King, which is, to think what you would have done in chief, and not how for the paſſages.

I do preſume alſo, in reſpect of my father's memory, and that I have been always gracious in the lower houſe, I have intereſt in the gentlemen of *England*, and ſhall be able to do ſome good effect in rectifying that body of parliament-men, which is *cardo rerum*. For let me tell your Majeſty, that that part of the chancellor's place, which is to judge in equity between party and party, that ſame *regnum judiciale* (which ſince my father's time is but too much enlarged) concerneth your Majeſty leaſt, more than the acquitting of your conſcience for juſtice: but it is the other parts of a moderator amongſt your council, of an overſeer over your judges, of a planter of fit juſtices and governours in the country, that importeth your affairs and theſe times moſt.

I will add alſo, that I hope by my care the inventive part of your council will be ſtrengthen'd, who now commonly do exerciſe rather their judgments than their inventions; and the inventive part cometh from projectors and private men, which cannot be ſo well; in which kind my Lord of *Saliſbury* had a good method, if his ends had been upright.

To conclude, if I were the man I would be, I ſhould hope, that as your Majeſty hath of late won hearts by depreſſing; you ſhould in this leſe no hearts by advancing: for I ſee your people can better ſkill of *concretum* than *abſtractum*, and that the waves of their affections flow rather after perſons than things: So that acts of this nature (if this were one) do more good than twenty bills of grace. If God call my Lord Chancellor, the warrants and commiſſions which are requiſite for the taking off the ſeal, and for the working with it, and for reviving of warrants under his hand, which die with him, and the like, ſhall be in readineſs. And in this, time preſſeth more, becauſe it is the end of a term, and almoſt the beginning of the circuits; ſo that the ſeal cannot ſtand ſtill: But this may be done as heretofore by commiſſion, till your Majeſty hath reſolved of an officer. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject, and bounden ſervant,

Feb. 12. 1615. Fr. Bacon.

* *Gloria in obſequio* is taken from the ſixth book of the annals of *Tacitus*: Where, ſome perſons being accuſed for their intimacy with *Sejanus*, the late great favourite of the Emperor *Tiberius*; *M. Terentius*, a *Roman* knight, did not, like others, excuſe or deny the ſame for fear of puniſhment; but doth in the ſenate make an ingenuous confeſſion thereof, and gives his reaſons why he not only courted, but rejoiced in obtaining the friendſhip of *Sejanus*. And then addreſſes himſelf, as if ſpeaking to *Tiberius*, in theſe words; *Non eſt noſtrûm aeſtimare, quem ſupra caeteros, & quibus de cauſis extollas: Tibi ſummum rerum judicium Dii dedere; nobis* obſequii gloria *relicta eſt.* 'It does not become us to enquire into 'the perſon you are pleaſed to prefer above others, or into the reaſons: To you heaven hath given a con- 'ſummate judgment; to us there remains the glory of a chearful obedience.' *Stephens.*

CXXV. A Letter to the King, of my Lord Chancellor's amendment, and the difference begun between the Chancery and the King's-bench.

It may pleaſe your excellent Majeſty;

I do find, God be thanked, a ſenſible amendment in my Lord Chancellor: I was with him yeſterday in private conference about half an hour; and this day again, at ſuch a time as he did ſeal, which he endured well almoſt the

ſpace

ſpace of an hour, though the vapour of wax be offenſive to him. He is free from a fever, perfect in his powers of memory and ſpeech; and not hollow in his voice nor looks: he hath no panting or labouring reſpiration; neither are his coughs dry or weak. But whoſoever thinketh his diſeaſe is but melancholy, he maketh no true judgment of it; for it is plainly a formed and deep cough, with a pectoral ſurcharge; ſo that at times he doth almoſt *animam agere*. I forbear to advertiſe your Majeſty of the care I took to have commiſſions in readineſs, becauſe Mr. Secretary *Lake* hath let me underſtand he ſignified as much to your Majeſty: but I hope there ſhall be no uſe for them at this time. And as I am glad to advertiſe your Majeſty of the amendment of your chancellor's perſon, ſo I am ſorry to accompany it with an advertiſement of the ſickneſs of your chancery court, though (by the grace of God) that cure will be much eaſier than the other. It is true I did lately write to your Majeſty, that for the matter of the *habeas corpora*, (which was the third matter in law you had given me in charge;) I did think the communion in ſervice between my Lord Chancellor and my Lord Chief Juſtice, in the great buſineſs of examination, would ſo join them as they would not ſquare at this time; but pardon me (I humbly pray your Majeſty,) if I have too reaſonable thoughts.

And yet that which happened the laſt day of the term, concerning certain indictments in the nature of *praemunire*, preferred into the King's-bench but not found; is not ſo much as is voiced abroad; though I muſt ſay, it was *omni tempore nimium, & hoc tempore alienum:* and therefore, I beſeech your Majeſty not to give any believing ear to reports, but to receive the truth from me, that am your Attorney-General, and ought to ſtand indifferent for juriſdictions of all courts; which account I cannot give your Majeſty now, becauſe I was then abſent; and ſome are now abſent, which are properly and authentically to inform me touching that which paſſed. Neither let this any ways disjoint your other buſineſs, for there is a time for all things, and this very accident may be turned to good. Not that I am of opinion that that fame cunning maxim of *ſepara & impera*, which ſometimes holdeth in perſons, can well take place in juriſdictions; but becauſe ſome good occaſion by this exceſs may be taken to ſettle that, which would have been more dangerous, if it had gone out by little and little. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject and moſt bounden ſervant,

Feb. 15. 1615. FR. BACON.

CXXVI. To Sir GEORGE VILLIERS.

SIR,

I RECEIVED this morning from you two letters by the ſame bearer; the one written before, the other after his Majeſty had received my laſt.

In this difference between the two courts of Chancery and King's-bench, (for ſo I had rather take it for this time, than between the perſons of my Lord Chancellor and my Lord Chief Juſtice,) I marvel not, if rumour get way of true relation; for I know fame hath ſwift wings, ſpecially that which hath black feathers: but within theſe two days, (for ſooner I cannot be ready,) I will write unto his Majeſty both the narrative truly, and my opinion ſincerely; taking much comfort that I ſerve ſuch a King, as hath God's property in diſcerning truly of mens hearts. I purpoſe to ſpeak with my Lord Chancellor this day; and ſo to exhibit that cordial of his Majeſty's grace, as I hope

that other accident will rather rouze and raiſe his ſpirit, than deject him or incline him to relapſe. Mean while I commend the wit of a mean man that ſaid this other day, Well, the next term you ſhall have an old man come with a beſom of wormwood in his hand, that will ſweep away all this. For it is my Lord Chancellor's faſhion, ſpecially towards the ſummer, to carry a poſy of wormwood. I write this letter in haſte to return your meſſenger with it. God keep you, and long and happily may you ſerve his Majeſty.

Your true and affectionate ſervant,

Feb. 19. 1615. FR. BACON.

Sir, I thank you for your inward letter; I have burned it as you commanded: but the fire it hath kindled in me will never be extinguiſhed.

CXXVII. To Sir GEORGE VILLIERS, about ſwearing him into the privy council.

SIR,

MY Lord Chancellor's health growing with the days, and his reſignation being an uncertainty, I would be glad you went on with my firſt motion, my ſwearing Privy Counſellor. This I deſire, not ſo much to make my ſelf more ſure than the other, and to put it paſt competition, (for herein I reſt wholly upon the King and your excellent ſelf;) but becauſe I find hourly that I need this ſtrength in his Majeſty's ſervice, both for my better warrant and ſatisfaction of my conſcience, that I deal not in things above my vocation; and for my better countenance and prevailing, where his Majeſty's ſervice is, under any pretext, oppoſed, I would it were diſpatched. I remember a greater matter than this was diſpatched by a letter from *Royſton*, which was the placing of the Archbiſhop that now is; and I imagine the King did it on purpoſe, that the act might appear to be his own.

MY Lord Chancellor told me yeſterday in plain terms, that if the King would aſk his opinion touching the perſon that he would commend to ſucceed him upon death or diſability, he would name me for the fitteſt man. You may adviſe, whether uſe may not be made of this offer.

I SENT a pretty while ſince a paper to Mr. *John Murray*, which was indeed a little remembrance of ſome things paſt, concerning my honeſt and faithful ſervices to his Majeſty; not by way of boaſting, (from which I am far,) but as tokens of my ſtudying his ſervice uprightly and carefully. If you be pleaſed to call for the paper which is with Mr. *John Murray*, and to find a fit time that his Majeſty may caſt an eye upon it, I think it will do no hurt; and I have written to Mr. *Murray* to deliver the paper, if you call for it. God keep you in all happineſs.

Your trueſt ſervant,

Feb. 21. 1615. FR. BACON.

CXXVIII. To the KING, of the Chancery and King's-Bench.

It may pleaſe your moſt excellent Majeſty,

I WAS yeſterday in the afternoon with my Lord Chancellor, according to your commandment which I received by the maſter of the horſe, and find the old man well comforted, both towards God, and toward the world, and that

that ſame middle comfort which is divine and humane, proceeding from your Majeſty, being God's lieutenant upon earth, I am perſuaded hath been a great cauſe that ſuch a ſickneſs hath been portable to ſuch an age. I did not fail in my conjecture, that this buſineſs of the chancery hath ſtirred him; he ſheweth to deſpiſe it, but he is full of it, and almoſt like a young duelliſt that findeth himſelf behind-hand.

I WILL now, as your Majeſty requireth, give you a true relation of that which hath paſſed; neither will I decline your royal commandment for delivering my opinion alſo, though it be a tender ſubject to write on; but I that account my being but as an accident to my ſervice, will neglect no duty upon ſelf-ſafety.

FIRST, it is neceſſary I let your Majeſty know the ground of the difference between the two courts, that your Majeſty may the better underſtand the narrative.

THERE was a ſtatute made 27 *Edw.* 3. cap. 1. which (no doubt) in the principal intention thereof, was ordained againſt thoſe that ſued to *Rome*; wherein there are words ſomewhat general againſt any that queſtioneth or impeacheth any judgment given in the King's courts, or in any other courts. Upon theſe doubtful words (other courts) the controverſy groweth. For the ſounder interpretation taketh them to be meant of thoſe courts, which though locally they were not held at *Rome*, or where the pope's chair was, but here within the realm; yet in their juriſdiction had their dependence upon the court of *Rome*; as were the court of the legate here, and the courts of the archbiſhops and biſhops, which were then but ſubordinate judgment-ſeats to that high tribunal of *Rome*. And for this conſtruction, the oppoſition of the words (if they be well obſerved) between the King's courts and other courts, maketh very much; for it importeth as if thoſe others courts were not the King's courts. Alſo the main ſcope of the ſtatute fortifieth the ſame. And laſtly, the practice of many ages. The other interpretation, (which cleaveth to the letter,) expoundeth the King's courts to be the courts of law only, and other courts to be courts of equity, as the chancery, exchequer-chamber, duchy, *&c.* Though this alſo flieth indeed from the letter, for that all theſe are the King's courts.

THERE is alſo another ſtatute, which is but a ſimple prohibition, and not with a penalty, of a *praemunire*, (as the other is;) that after judgments given in the King's courts, the parties ſhall be in peace, except the judgment be undone by error or attaint, which is a legal form of reverſal. And of this alſo I hold the ſounder interpretation to be to ſettle poſſeſſions againſt diſturbances, and not to take away remedy in equity, where thoſe judgments are obtained *ex rigore juris*, and againſt good conſcience.

BUT upon theſe two ſtatutes there hath been a late conceit in ſome, that if a judgment paſs at the common law againſt any, that he may not after ſue for relief in chancery; and if he doth, both he and his counſel and his ſollicitors, yea and the judge in equity himſelf are within the danger of thoſe ſtatutes.

HERE your Majeſty hath the true ſtate of the queſtion, which I was neceſſarily to open to you firſt, becauſe your Majeſty calleth for this relation; not as news, but as buſineſs. Now to the hiſtorical part.

IT is the courſe of the King's-bench, that they give in charge to a Grand Jury offences of all natures to be preſented within *Middleſex*, where the ſaid court is; and the manner is, to enumerate them as it were in articles. This was done by Juſtice *Crook*, the Wedneſday before the term ended. And that article

article *(If any man, after a judgment given, had drawn the ſaid judgment to a new examination in any other court)* was by him ſpecially given in charge; which had not uſed to be given in charge before. It is true, it was not ſolemnly dwelt upon, but as it were thrown in amongſt the reſt.

The laſt day of the term, (and that which all men condemn, the ſuppoſed laſt day of my Lord Chancellor's life,) there were two indictments preferred of *praemunire*, for ſuing in chancery after judgment in common law; the one by *Rich. Granville*, the other by *William Allen*: the former againſt *Courtney*, the party in chancery, *Gibb* the Counſellor, and *Deurſt* the Clerk; the latter againſt Alderman *Bowles* and *Humfry Smith*, parties in chancery; Serjeant *More* the Counſellor, *Elias Wood* Sollicitor in the cauſe, and Sir *John Tindal*, Maſter of the Chancery, and an aſſeſſor to my Lord Chancellor.

For the caſes themſelves, it were too long to trouble your Majeſty with them; but this I will ſay, if they were ſet on that preferred them, they were the worſt marks-men that ever were that ſet them on. For there could not have been choſen two ſuch cauſes to the honour and advantage of the chancery, for the juſtneſs of the decrees, and the foulneſs and ſcandal both of fact and perſon, in thoſe that impeach the decrees.

The grand jury conſiſting (as it ſeemeth) of very ſubſtantial and intelligent perſons, would not find the bills, notwithſtanding they were clamoured by the parties, and twice ſent back by the court; and in concluſion, reſolutely ſeventeen of nineteen found an *ignoramus*; wherein, for that time, I think *ignoramus* was wiſer than thoſe that know too much.

Your Majeſty will pardon me, if I be ſparing in delivering to you ſome other circumſtances of aggravation, and of concurrences of ſome like matters the ſame day; as if it had been ſome fatal conſtellation. They be not things ſo ſufficiently tried, as I dare put them into your ear.

For my opinion, I cannot but begin with this preface, that I am infinitely ſorry that your Majeſty is thus put to ſalve and cure, not only accidents of time, but errors of ſervants; for I account this a kind of ſickneſs of my Lord *Coke*'s, that comes almoſt in as ill a time as the ſickneſs of my Lord Chancellor. And as (I think) it was one of the wiſeſt parts that ever he played when he went down to your Majeſty to *Royſton*, and deſired to have my Lord Chancellor joined with him; ſo this was one of the weakeſt parts that ever he played, to make all the world perceive that my Lord Chancellor is ſever'd from him at this time.

But for that which may concern your ſervice, which is my end, (leaving other men to their own ways;) firſt, my opinion is plainly, that my Lord *Coke* at this time is not to be diſgraced; both becauſe he is ſo well habituate for that which remaineth of theſe capital cauſes, and alſo for that which I find is in his breaſt touching your finances and matters of repair of your eſtate; and (if I might ſpeak it) as I think it were good his hopes were at an end in ſome kind, ſo I could wiſh they were raiſed in ſome other.

On the other ſide, this great and publick affront, not only to the reverend and well deſerving perſon of your chancellor, (and at a time when he was thought to lie on dying, which was barbarous,) but to your high court of chancery, which is the court of your abſolute power, may not (in my opinion) paſs lightly, nor end only in ſome formal atonement, but uſe is to be made thereof for the ſettling of your authority and ſtrengthening of your prerogative according to the true rules of monarchy.

Now to reconcile and accommodate theſe two advices, which ſeem almoſt oppoſite: Firſt, your Majeſty may not ſee it, (though I confeſs it be ſuſpicious) that my Lord *Coke* was any way aforehand privy to that which was

done; or that he did ſet it or animate it, but only took the matter as it came before him; and that his error was only, that at ſuch a time he did not divert it in ſome good manner.

SECONDLY, If it be true, (as is reported,) that any of the puiſne judges did ſtir this buſineſs; or that they did openly revile and menace the jury for doing their conſcience, (as they did honeſtly and truly;) I think that judge is worthy to loſe his place. And to be plain with your Majeſty, I do not think there is any thing a greater *polychreſton*, or *ad multa utile*, to your affairs, than upon a juſt and fit occaſion to make ſome example againſt the preſumption of a judge in cauſes that concern your Majeſty, whereby the whole body of thoſe magiſtrates may be contained the better in awe; and it may be this will light upon no unfit ſubject of a perſon, that is rude, and that no man cares for.

THIRDLY, If there be no one ſo much in fault, (which I cannot yet affirm either way, and there muſt be a juſt ground, God forbid elſe;) yet I ſhould think, that the very preſumption of going ſo far, in ſo high a cauſe, deſerveth to have that done which was done in this very caſe upon the indictment of Serjeant *Heale* in Queen *Elizabeth*'s time; that the judges ſhould anſwer it upon their knees before your Majeſty or your council, and receive a ſharp admonition: At which time alſo, my Lord *Wray* being then chief juſtice, ſlipt the collar and was forborn.

FOURTHLY, For the perſons themſelves, *Glanville* and *Allen*, which are baſe fellows and turbulent, I think there will be diſcovered and proved againſt them (beſides the preferring of the bills) ſuch combinations and contemptuous ſpeeches and behaviours, as there will be good ground to call them, and perhaps ſome of their petty counſellors at law, into the ſtar-chamber.

IN all this which I have ſaid your Majeſty may be pleaſed to obſerve, that I do not engage you much in the main point of the juriſdiction, for which I have a great deal of reaſon, which I now forbear. But two things I wiſh to be done: The one, that your Majeſty take this occaſion to redouble unto all your judges your ancient and true charge and rule, that you will endure no innovating the point of juriſdiction, but will have every court impaled within their own precedents, and not aſſume to themſelves new powers upon conceits and inventions of law: The other, that in theſe high cauſes that touch upon ſtate and monarchy, your Majeſty give them ſtreight charge; that upon any occaſions intervenient hereafter, they do not make the vulgar party to their conteſtations, by publickly handling them before they have conſulted with your Majeſty to whom the reglement of thoſe things only appertaineth.

TO conclude, I am not without hope, that your Majeſty managing this buſineſs according to your great wiſdom, (unto which I acknowledge myſelf not to be worthy to be card-holder, or candle-holder,) will make profit of this accident as a thing of God's ſending.

LASTLY, I may not forget to repreſent to your Majeſty, that there is no thinking of arraignments until theſe things be ſomewhat accommodated, and ſome outward and ſuperficial reconciliation at leaſt made between my Lord Chancellor and my Lord Chief Juſtice; for this accident is a banquet to all the delinquent's friends. But this is a thing that falleth out naturally of itſelf, in reſpect of the judges going circuit, and my lord chancellor's infirmity with hope of recovery: And although this protraction of time may breed ſome doubt of mutability, yet I have lately learned out of an excellent

letter of a certain King, that the ſun ſheweth ſometimes watery to our eyes, but when the cloud is gone, the ſun is as before. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject and bounden ſervant,

Feb. 21. 1615. FR. BACON.

CXXIX. To the KING, on the breach of the new company.

It may pleaſe your excellent Majeſty,

YOUR privy council have wiſely and truly diſcerned of the orders and demands of the new company, that they are unlawful and unjuſt; and themſelves have now acknowledged the work impoſſible without them, by their petition in writing now regiſter'd in the council-book; ſo as this concluſion (of their own making) is become peremptory and final to themſelves; and the impoſſibility confeſſed, the practice and abuſe reſerved to the judgment the ſtate ſhall make of it.

THIS breach then of this great contract is wholly on their part, which could not have been if your Majeſty had broken upon the patent; for the patent was your Majeſty's act, the orders are their act; and in the former caſe they had not been liable to farther queſtion, now they are.

THERE reſt two things to be conſidered: the one, if they (like *Proteus* when he is hard held) ſhall yet again vary their ſhape; and ſhall quit their orders convinced of injuſtice, and lay their impoſition only upon the trade of whites, whether your Majeſty ſhall farther expect: The other, if your Majeſty diſſolve them upon this breach, on their part what is farther to be done for the ſetting of the trade again in joint, and for your own honour and profit: In both which points I will not preſume to give opinion, but only to break the buſineſs for your Majeſty's better judgment.

FOR the firſt, I am ſorry the occaſion was given, (by my Lord *Coke*'s ſpeech at this time of the commitment of ſome of them,) that they ſhould ſeek *omnem movere lapidem* to help themſelves. Better had it been, if (as my Lord *Fenton* ſaid to me that morning very judiciouſly and with a great deal of foreſight) that for that time they ſhould have had a bridge made for them to be gone. But my Lord *Coke* floweth according to his own tides, and not according to the tides of buſineſs. The thing which my Lord *Coke* ſaid was good and too little, but at this time it was too much; but that is paſt. Howſoever, if they ſhould go back and ſeek again to entertain your Majeſty with new orders or offers, (as is ſaid to be intended) your Majeſty hath ready two anſwers of repulſe, if it pleaſe your Majeſty to uſe them.

THE one, that this is now the fourth time that they have mainly broken with your Majeſty, and contradicted themſelves. Firſt, they undertook to dye and dreſs all the cloaths of the realm; ſoon after, they wound themſelves into the trade of whites, and came down to the proportion contracted. Secondly, they ought to have performed that contract according to their ſubſcription *pro rata*, without any of theſe orders and impoſitions; ſoon after, they deſerted their ſubſcription, and had recourſe to theſe devices of orders. Thirdly, if by order and not by ſubſcription, yet their orders ſhould have laid it upon the whites, which is an unlawful and prohibited trade; nevertheleſs they would have brought in lawful and ſettled trades, full manufactures, merchandize of all natures, poll-money or brotherhood-money, and I cannot tell

tell what. And now laſtly, it ſeemeth, they would go back to lay it upon the whites; and therefore whether your Majeſty will any more reſt and build this great wheel of your kingdoms upon theſe broken and brittle pins, and try experiments farther upon the health and body of your ſtate, I leave to your princely judgment.

THE other anſwer of repulſe, is a kind of appoſing them what they will do after the three years contracted for; which is a point hitherto not much ſtirred, tho' Sir *Lionel Cranfield* hath ever beaten upon it in his ſpeech with me; for after the three years they are not tied otherways than as trade ſhall give encouragement, of which encouragement your Majeſty hath a bitter taſte: And if they ſhould hold on according to the third year's proportion, and not riſe on by farther gradation, your Majeſty hath not your end. No, I fear, and have long feared that this feeding of the foreigner may be dangerous; for as we may think to hold up our cloathing by vent of whites, till we can dye and dreſs; ſo they (I mean the *Dutch*) will think to hold up their manufacture of dying and dreſſing upon our whites, till they can clothe: ſo as your Majeſty hath the greateſt reaſon in the world to make the new company to come in and ſtrengthen that part of their contract; and they refuſing, (as it is confidently believed they will,) to make their default more viſible to all men.

FOR the ſecond main part of your Majeſty's conſultation, that is, what ſhall be done ſuppoſing an abſolute breach, I have had ſome ſpeech with Mr. Secretary *Lake*, and likewiſe with Sir *Lionel Cranfield*; and (as I conceive) there may be three ways taken into conſideration: The firſt is, that the old company be reſtored, who (no doubt) are in appetite and (as I find by Sir *Lionel Cranfield*) not unprepared; and that the licences, the one, that of 30000 cloaths, which was the old licence; the other that of my Lord of *Cumberland*'s, which is, without ſtint, (my Lord of *Cumberland* receiving ſatisfaction,) be compounded into one entire licence without ſtint; and then, that they amongſt themſelves take order for that profit which hath been offered to your Majeſty. This is a plain and known way, wherein your Majeſty is not an actor; only it hath this, that the work of dying and dreſſing cloaths, which hath been ſo much glorified, ſeemeth to be wholly relinquiſhed, if you leave there. The ſecond is, that there be a free trade of cloth, with this difference, that the dyed and dreſſed pay no cuſtom, and the whites double cuſtom, it being a merchandize prohibited and only licentiate. This continueth in life and fame the work deſired, and will have a popular applauſe: But I do confeſs, I did ever think that trading in companies is moſt agreeable to the *Engliſh* nature, which wanteth that ſame general vein of a republick which runneth in the *Dutch*, and ſerveth to them inſtead of a company; and therefore I dare not adviſe to venture this great trade of the kingdom (which hath been ſo long under government) in a free or looſe trade. The third is a compounded way of both, which is, to go on with the trade of whites by the old company reſtored; and that your Majeſty's profit be raiſed by order amongſt themſelves, rather than by double cuſtom, wherein you muſt be the actor; and that nevertheleſs there be added a privilege to the ſame company to carry out cloaths dyed, and dreſſed, cuſtom-free; which will ſtill continue as a glorious beam of your Majeſty's royal deſign. I hope and wiſh at leaſt, that this which I have written may be of ſome uſe to your Majeſty, to ſettle, by the advice of the lords about you, this great buſineſs: At the leaſt, it is the effect of my care and poor ability, which, if in me

be

be any, it is given me to no other end but faithfully to ſerve your Majeſty. God ever preſerve you.

Your Majeſty's moſt humble ſubject, and bounden ſervant,

Feb. 25. 1615. FR. BACON.

CXXX. To Sir GEORGE VILLIERS.

SIR,

I HUMBLY pray you not to think me over-haſty or in much appetite, if I put you in remembrance of my motion of ſtrengthening me with the oath and truſt of a privy counſellor; not for mine own ſtrength, (for as to that I thank God I am armed within;) but for the ſtrength of my ſervice. The times I ſubmit to you, who knoweth them beſt. But ſure I am, there were never times which did more require a King's Attorney to be well armed, and (as I ſaid once to you) to wear a gauntlet and not a glove. The arraignments when they proceed; the contention between the Chancery and King's-bench; the great cauſe of the *Rege inconſulto*, which is ſo precious to the King's prerogative; divers other ſervices that concern the King's revenue and the repair of his eſtate. Beſides, it pleaſeth his Majeſty to accept well of my relations touching his buſineſs, which may ſeem a kind of interloping (as the merchants call it) for one that is no counſellor. But I leave all unto you, thinking myſelf infinitely bounden unto you for your great favours, the beams whereof I ſee plainly reflect upon me even from others; ſo that now I have no greater ambition than this, that as the King ſheweth himſelf to you the beſt maſter, ſo I might be found your beſt ſervant. In which wiſh and vow I ſhall ever reſt,

Moſt devoted and affectionate to obey your commands,

Feb. 27. 1615. FR. BACON.

CXXXI. To his MAJESTY about the E. of *Somerſet*.

It may pleaſe your moſt excellent Majeſty,

AT my laſt acceſs to your Majeſty, it was fit for me to conſider the time and your journey, which maketh me now trouble your Majeſty with a remnant of that I thought then to have ſaid: beſides your old warrant and commiſſion to me, to advertiſe your Majeſty when you are *aux champs*, of any thing that concern'd your ſervice and my place. I know your Majeſty is *nunquam minus ſolus, quam cum ſolus*; and I confeſs in regard of your great judgment, (unto which nothing ought to be preſented but well weighed,) I could almoſt wiſh that the manner of *Tiberius* were in uſe again, of whom *Tacitus* ſaith, *mos erat quamvis praeſentem ſcripto adire*; much more in abſence. I ſaid to your Majeſty that which I do now repeat, that the evidence upon which my Lord of *Somerſet* ſtandeth indicted is of a good ſtrong thread, conſidering impoiſoning is the darkeſt of offences; but that the thread muſt be well ſpun and woven together: for your Majeſty knoweth it is one thing to deal with a jury of *Middleſex* and *Londoners*, and another to deal with the peers; whoſe objects perhaps will not be ſo much what is before them in the preſent caſe, (which I think is as odious to them as to the vulgar,) but what may be hereafter. Beſides, there be two diſadvantages, we that

ſhall

ſhall give in evidence ſhall meet with, ſomewhat conſiderable; the one, that the ſame things often open'd loſe their freſhneſs, except there be an aſperſion of ſomewhat that is new; the other is the expectation raiſed, which makes things ſeem leſs than they are, becauſe they are leſs than opinion. Therefore I were not your attorney, nor my ſelf, if I ſhould not be very careful, that in this laſt part, which is the pinnacle of your former juſtice, all things may paſs *ſine offendiculo, ſine ſcrupulo.* Hereupon I did move two things, which (having now more fully explain'd my ſelf) I do in all humbleneſs renew. Firſt, that your Majeſty will be careful to chuſe a ſteward of judgment, that may be able to moderate the evidence and cut off digreſſions; for I may interrupt, but I cannot ſilence: The other, that there may be ſpecial care taken for the ordering the evidence, not only for the knitting, but for the liſt, and (to uſe your Majeſty's own words) the confining of it. This to do, if your Majeſty vouchſafe to direct it your ſelf, that is the beſt; if not, I humbly pray you to require my Lord Chancellor, that he, together with my Lord Chief Juſtice, will confer with my ſelf and my fellows, that ſhall be uſed for the marſhalling and bounding of the evidence, that we may have the help of his opinion, as well as that of my Lord Chief Juſtice; whoſe great travels as I much commend, yet that ſame *plerophoria*, or over-confidence, doth always ſubject things to a great deal of chance.

THERE is another buſineſs proper for me to crave of your Majeſty at this time, (as one that have in my eye a great deal of ſervice to be done,) concerning your caſual revenue; but conſidering times and perſons, I deſire to be ſtrengthened by ſome ſuch form of commandment under your royal hand, as I ſend you here incloſed. I moſt humbly pray your Majeſty to think, that I underſtand my ſelf right well in this which I deſire, and that it tendeth greatly to the good of your ſervice. The warrant I mean not to impart, but upon juſt occaſion; thus thirſty to hear of your Majeſty's good health, I reſt.

22 Jan. 1615.

CXXXII. To his MAJESTY about the chancellor's place.

It may pleaſe your moſt excellent Majeſty,

THE laſt day, when it pleaſed your Majeſty to expreſs your ſelf towards me in favour, far above that I can deſerve or could expect, I was ſurprized by the prince's coming in: I moſt humbly pray your Majeſty therefore, to accept theſe few lines of acknowledgment. I never had great thoughts for my ſelf, farther than to maintain thoſe great thoughts which, I confeſs, I have for your ſervice. I know what honour is, and I know what the times are; but, I thank God, with me my ſervice is the principal; and it is far from me, under honourable pretences, to cover baſe deſires; which I account them to be, when men refer too much to themſelves, eſpecially ſerving ſuch a King. I am afraid of nothing but that the maſter of the horſe, your excellent ſervant, and I ſhall fall out about this, who ſhall hold your ſtirrup beſt. But were your Majeſty mounted and ſeated without difficulties and diſtaſtes in your buſineſs, as I deſire and hope to ſee you; I ſhould *ex animo* deſire to ſpend the decline of my years in my ſtudies: wherein alſo I ſhould not forget to do him honour, who, beſides his active and politic virtues, is the beſt pen of Kings, and much more, the beſt ſubject of a pen. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject, and more and more obliged ſervant,

April 1. 1616. FR. BACON.

CXXXIII. To Sir GEORGE VILLIERS, about the E. of *Somerſet.*

SIR,

I THOUGHT it convenient to give his Majeſty an account of that which his Majeſty gave me in charge in general, reſerving the particulars for his coming; and I find it neceſſary to know his pleaſure in ſome things ere I could farther proceed.

MY Lord Chancellor and my ſelf ſpent *Thurſday* and yeſterday, the whole forenoons of both days, in the examination of Sir *Robert Cotton*; whom we find hitherto but empty, ſave only the great point of the treaty with *Spain*.

THIS examination was taken before his Majeſty's warrant came to Mr. Vice-chamberlain, for communicating unto us the ſecrets of the penſions; which warrant I received yeſterday morning being *Friday*, and a meeting was appointed at my Lord Chancellor's in the evening after council; upon which conference we find matter of farther examination for Sir *Robert Cotton*, of ſome new articles, whereupon to examine *Somerſet*, and of entering into examination of Sir *William Mounſon*.

WHEREFORE, firſt for *Somerſet*, being now ready to proceed to examine him, we ſtay only upon the Duke of *Lenox*, who it ſeemeth is fallen ſick and keepeth in; without whom, we neither think it warranted by his Majeſty's direction, nor agreeable to his intention, that we ſhould proceed; for that will want, which ſhould ſweeten the cup of medicine, he being his countryman and friend. Herein then we humbly crave his Majeſty's direction with all convenient ſpeed, whether we ſhall expect the duke's recovery, or proceed by our ſelves; or that his Majeſty will think of ſome other perſon (qualified according to his Majeſty's juſt intention,) to be joined with us. I remember we had ſpeech with his Majeſty of my Lord *Hay*; and I, for my part, can think of no other, except it ſhould be my Lord Chancellor of *Scotland*, for my Lord *Binnin* may be thought too near allied.

I am farther to know his Majeſty's pleaſure concerning the day; for my Lord Chancellor and I conceiv'd his Majeſty to have deſigned the *Monday* and *Tueſday* after St. *George*'s feaſt; and nevertheleſs we conceived alſo, that his Majeſty underſtood that the examinations of *Somerſet* about this, and otherwiſe touching the *Spaniſh* practices, ſhould firſt be put to a point; which will not be poſſible, as time cometh on, by reaſon of this accident of the duke's ſickneſs, and the cauſe we find of Sir *William Mounſon*'s examination, and that divers of the peers are to be ſent for from remote places.

IT may pleaſe his Majeſty therefore to take into conſideration, whether the days may not well be put off till *Wedneſday* and *Thurſday* after the term, which endeth on the *Monday*, being the *Wedneſday* and *Thurſday* before *Whitſuntide*; or, if that pleaſe not his Majeſty, (in reſpect it may be, his Majeſty will be then in town, whereas theſe arraignments have been ſtill in his Majeſty's abſence from town,) then to take *Monday* and *Tueſday* after *Trinity Sunday*, being the *Monday* and *Tueſday* before *Trinity* term.

Now for Sir *William Mounſon*, if it be his Majeſty's pleaſure that my Lord Chancellor and I ſhall proceed to the examination of him, (for that of the duke of *Lenox* differs, in that there is not the like cauſe as in that of *Somerſet*,) then his Majeſty may be pleaſed to direct his commandment and warrant to my Lord Chief Juſtice, to deliver unto me the examinations he took of Sir *William Mounſon*, that thoſe joined to the information which we have received from Mr. Vice-Chamberlain, may be full inſtructions unto us for his examination.

mination. Farther, I pray let his Majesty know, that on *Thursday* in the evening my Lord Chief Justice and my self attended my Lord Chancellor at his house for the settling that scruple which his Majesty most justly conceived in the examination of the Lady *Somerset*; at which time, resting on his Majesty's opinion, that that evidence, as it standeth now uncleared, must *secundum leges sanae conscientiae* be laid aside; the question was, whether we should leave it out, or try what a re-examination of my Lady *Somerset* would produce? Whereupon we agreed upon a re-examination of my Lady *Somerset*, which my Lord Chief Justice and I have appointed for *Monday* morning. I was bold at that meeting to put my Lord Chief Justice a posing question; which was, whether that opinion which his brethren had given upon the whole evidence, and he had reported to his Majesty, *viz.* that it was good evidence, in their opinions, to convict my Lord of *Somerset*, was not grounded upon this part of the evidence now to be omitted, as well as upon the rest: who answered positively, no; and they never saw the exposition of the letter, but the letter only.

The same *Thursday* evening, before we enter'd into this last matter, and in the presence of Mr. Secretary *Winwood* (who left us when we went to the former business,) we had conference concerning the frauds, and abusive grants passed to the prejudice of his Majesty's state of revenue; where my Lord Chief Justice made some relation of his collections which he had made of that kind; of which I will only say this, that I heard nothing that was new to me, and I found my Lord Chancellor in divers particulars, more ready than I found him. We grew to a distribution both of times and of matters, for we agreed what to begin with presently, and what should follow, and also we had consideration what was to be holpen by law, what by equity, and what by parliament; wherein I must confess, that in the last of these (of which my Lord Chief Justice made most account) I make most doubt. But the conclusion was, that upon this entrance I should advise and confer at large with my Lord Chief Justice, and set things in work. The particulas I refer till his Majesty's coming.

The learned council have now attended me twice at my chamber, to confer upon that which his Majesty gave us in commandment, for our opinions upon the case set down by my Lord Chancellor, whether the statutes extend to it or no; wherein we are more and more edified and confirmed that they do not, and shall shortly send our report to his Majesty.

Sir, I hope you will bear me witness I have not been idle; but all is nothing to the duty I owe his Majesty, for his singular favours past and present; supplying all with love and prayers, I rest,

Your true friend and devoted servant,

Apr. 13. 1616. Fr. Bacon.

CXXXIV. To Sir George Villiers, about the E. of *Somerset*.

Sir,

I Received from you a letter of very brief and clear directions; and I think it a great blessing of God upon me and my labours, that my directions come by so clear a conduit, as they receive no tincture in the passage.

Yesterday my Lord Chancellor, the Duke of *Lenox*, and my self, spent the whole afternoon at the tower, in the examination of *Somerset*, upon the articles sent from his Majesty, and some other additionals, which were in effect contained in the former, but extended to more particularity, by occasion of somewhat discovered by *Cotton*'s examination, and Mr. Vice-Chamberlain's information.

He

He is full of proteſtations, and would fain keep that quarter toward *Spain* clear; uſing but this for argument, that he had ſuch fortunes from his Majeſty, as he could not think of bettering his conditions from *Spain*, becauſe (as he ſaid) he was no military man. He cometh nothing ſo far on (for that which concerneth the treaty) as *Cotton*, which doth much aggravate ſuſpicion againſt him: The farther particulars I reſerve to his Majeſty's coming.

In the end, *tanquam obiter*, but very effectually, my Lord Chancellor put him in mind of the ſtate he ſtood in for the impoiſonment; but he was little moved with it, and pretended careleſſneſs of life, ſince ignominy had made him unfit for his Majeſty's ſervice. I am of opinion that the fair uſe of him, as it was fit for the *Spaniſh* examinations, and for the queſtions touching the papers and diſpatches, and all that, ſo it was no good preparative to make him deſcend into himſelf touching his preſent danger: and therefore my Lord Chancellor and my ſelf thought not good to inſiſt upon it at this time.

I have received from my Lord Chief Juſtice the examination of Sir *William Mounſon*; with whom we mean to proceed to farther examination with all ſpeed.

My Lord Chief Juſtice is altered touching the re-examination of the lady, and deſired me that we might ſtay till he ſpake with his Majeſty, ſaying it could be no caſting back to the buſineſs, which I did approve.

My ſelf, with the reſt of my fellows, upon due and mature advice, perfected our report touching the chancery; for the receiving whereof, I pray you put his Majeſty in mind at his coming, to appoint ſome time for us to wait upon him all together, for the delivery in of the ſame, as we did in our former certificate.

For the revenue matters, I reſerve them to his Majeſty's coming; and in the mean time I doubt not but Mr. Secretary *Winwood* will make ſome kind of report thereof to his Majeſty.

For the concluſion of your letter concerning my own comfort, I can but ſay the *Pſalm* of *quid retribuam?* God that giveth me favour in his Majeſty's eyes, will ſtrengthen me in his Majeſty's ſervice. I ever reſt

Your true and devoted ſervant,

April 18. 1616. Fr. Bacon.

To requite your poſtſcript of excuſe for ſcribbling, I pray you excuſe that the paper is not gilt, I writing from *Weſtminſter-hall*, where we are not ſo fine.

CXXXV. A Letter to the King, with his Majesty's obſervations upon it.

It may pleaſe your moſt excellent Majeſty,

YOUR Majeſty hath put me upon a work of providence in this great cauſe, which is to break and diſtinguiſh future events into preſent caſes; and ſo to preſent them to your royal judgment, that in this action which hath been carried with ſo great prudence, juſtice, and clemency, there may be (for that which remaineth,) as little ſurprize as is poſſible; but that things duly foreſeen may have their remedies and directions in readineſs; wherein I cannot forget what the poet *Martial* ſaith; *O quantum eſt ſubitis caſibus ingenium!* ſignifying, that accident is many times more ſubtle than foreſight,

and over-reacheth expectation; and beſides, I know very well the meanneſs of my own judgment, in comprehending or forecaſting what may follow.

It was your Majeſty's pleaſure alſo, that I ſhould couple the ſuppoſitions with my opinion in every of them, which is a harder taſk; but yet your Majeſty's commandment requireth my obedience, and your truſt giveth me aſſurance.

I will put the caſe, which I wiſh; that *Somerſet* ſhould make a clear confeſſion of his offences, before he be produced to tryal.

Rex. I ſay with *Apollo*, *Medio tutius itur*, if it may ſtand with law; and if it cannot, when I ſhall hear that he confeſſeth, I am then to make choice of the firſt or the laſt.

In this caſe it ſeemeth your Majeſty will have a new conſult; the points whereof will be, 1. Whether your Majeſty will ſtay the tryal, and ſo ſave them both from the ſtage, and that publick ignominy. 2. Or whether you will (or may fitly by law) have the tryal proceed, and ſtay or reprieve the judgment, which ſaveth the lands from forfeiture, and the blood from corruption. 3. Or whether you will have both tryal and judgment proceed and ſave the blood only, not from corrupting, but from ſpilling.

These be the depths of your Majeſty's mercy which I may not enter into: but for honour and reputation they have theſe grounds.

That the blood of *Overbury* is already revenged by divers executions.

That confeſſion and penitency are the footſtools of mercy; adding this circumſtance likewiſe, that the former offenders did none of them make a clear confeſſion.

That the great downfal of ſo great perſons carrieth in it ſelf a heavy judgment, and a kind of civil death, although their lives ſhould not be taken.

All which may ſatisfy honour for ſparing their lives. But if your Majeſty's mercy ſhould extend to the firſt degree, which is the higheſt of ſparing the ſtage and the tryal; then three things are to be conſidered.

First, That they make ſuch a ſubmiſſion or deprecation as they proſtrate themſelves, and all that they have, at your Majeſty's feet, imploring your mercy.

Rex. This article cannot be mended in point thereof.

Secondly, That your Majeſty, in your own wiſdom, do adviſe what courſe you will take, for the utter extinguiſhing of all hopes of reſuſcitating of their fortunes and favour; whereof if there ſhould be the leaſt conceit, it will leave in men a great deal of envy and diſcontent.

And laſtly; whether your Majeſty will not ſuffer it to be thought abroad, that there is cauſe of farther examination of *Somerſet*, concerning matters of eſtate, after he ſhall begin once to be a confeſſant, and ſo make as well a politick ground, as a ground of clemency for farther ſtay.

And for the ſecond degree of proceeding to tryal, and ſtaying judgment, I muſt better inform my ſelf by precedents, and adviſe with my Lord Chancellor.

The ſecond caſe is, if that fall out which is likeſt (as things ſtand, and which we expect) which is, that the lady confeſs; and that *Somerſet* himſelf plead not guilty, and be found guilty:

Rex. If ſtay of judgment can ſtand with the law; I could even wiſh it in this caſe: in all the reſt this article cannot be mended.

In this caſe, firſt, I ſuppoſe your Majeſty will not think of any ſtay of judgment, but that the publick proceſs of juſtice paſs on.

Secondly, For your mercy to be extended to both for pardon of their execution, I have partly touched in the conſiderations applied to the former caſe; whereunto may be added, that as there is ground of mercy for her, upon her penitency and free confeſſion, and will be much more upon his finding guilty; becauſe the malice on his part will be thought the deeper ſource of the offence: ſo there will be ground for mercy on his part, upon the na-

ture of the proof; and becauſe it reſts chiefly upon preſumptions For certainly there may be an evidence ſo balanced, as it may have ſufficient matter for the conſcience of the peers to convict him, and yet leave ſufficient matter in the conſcience of a King upon the ſame evidence to pardon his life; becauſe the peers are aſtringed by neceſſity either to acquit or condemn; but grace is free: And for my part, I think the evidence in this preſent caſe will be of ſuch a nature.

THIRDLY, It ſhall be my care ſo to moderate the manner of charging him, as it might make him not odious beyond the extent of mercy.

Rex. That danger is well to be foreſeen, leſt he upon the one part commit impardonable errors, and I on the other part ſeem to puniſh him in the ſpirit of revenge.

LASTLY, All theſe points of mercy and favour, are to be underſtood with this limitation, if he do not, by his contemptuous and inſolent carriage at the bar, make himſelf incapable and unworthy of them.

THE third caſe is, if he ſhould ſtand mute and will not plead, whereof your Majeſty knoweth there hath been ſome ſecret queſtion.

IN this caſe I ſhould think fit, that, as in publick, both my ſelf, and chiefly my Lord Chancellor, (ſitting then as Lord Steward of *England*) ſhould dehort and deter him from that deſperation; ſo nevertheleſs, that as much ſhould be done for him, as was done for *Weſton*; which was to adjourn the court for ſome days, upon a chriſtian ground, that he may have time to turn from that mind of deſtroying himſelf; during which time your Majeſty's farther pleaſure may be known.

Rex. This article cannot be mended.

THE fourth caſe is that which I ſhould be very ſorry it ſhould happen, but it is a future contingent; that is, if the peers ſhould acquit him and find him not guilty.

IN this caſe the Lord Steward muſt be provided what to do. For as it hath been never ſeen, (as I conceive it) that there ſhould be any rejecting of the verdict, or any reſpiting of the judgment of the acquittal; ſo on the other ſide this caſe requireth, that becauſe there be many high and heinous offences, (though not capital) for which he may be queſtioned in the ſtar-chamber, or otherwiſe, that there be ſome touch of that in general at the concluſion, by my Lord Steward of *England*; and that therefore he be remanded to the tower, as cloſe priſoner.

Rex. This is ſo alſo.

FOR matter of examination, or other proceedings, my Lord Chancellor with my advice hath ſet down,

TO-MORROW, being Monday, for the re-examination of the lady:

WEDNESDAY next, for the meeting of the judges concerning the evidence:

THURSDAY, for the examination of *Somerſet* himſelf, according to your Majeſty's inſtructions:

WHICH three parts, when they ſhall be performed, I will give your Majeſty advertiſement with ſpeed, and in the mean time be glad to receive from your Majeſty (whom it is my part to inform truly) ſuch directions or ſignifications of your pleaſure as this advertiſement may induce, and that with ſpeed, becauſe the time cometh on: Well remembring who is the perſon whom your Majeſty admitted to this ſecret; I have ſent this letter open unto him, that he may take your Majeſty's times to report it, or ſhew it unto you; aſſuring myſelf that nothing is more firm than his truſt, tyed to your Majeſty's commandments.

Your Majeſty's moſt humble and moſt bounden ſubject and ſervant,

Apr. 28. 1616. FR. BACON.

CXXXVI.

CXXXVI. To Sir GEORGE VILLIERS, about the E. of *Somerſet*.

SIR,

I HAVE received my letter from his Majeſty with his marginal notes, which ſhall be my directions, being glad to perceive I underſtand his Majeſty ſo well. That ſame little charm, which may be ſecretly infuſed into *Somerſet*'s ear ſome few hours before his trial, was excellently well thought of by his Majeſty; and I do approve it both for matter and time; only if it ſeem good to his Majeſty, I would wiſh it a little enlarged: for if it be no more than to ſpare his blood, he hath a kind of proud humour which may overwork the medicine. Therefore I could wiſh it were made a little ſtronger, by giving him ſome hopes that his Majeſty will be good to his lady and child; and that time (when juſtice and his Majeſty's honour is once ſaved and ſatisfied) may produce farther fruit of his Majeſty's compaſſion: which was to be ſeen in the example of *Southampton*, whom his Majeſty after attainder reſtored; and *Cobham* and *Gray*, to whom his Majeſty, notwithſtanding they were offenders againſt his own Perſon, yet he ſpared their lives; and for *Gray*, his Majeſty gave him back ſome part of his eſtate, and was upon point to deliver him much more: He having been ſo highly in his Majeſty's favour, may hope well, if he hurt not himſelf by his publick miſdemeanour.

FOR the perſon that ſhould deliver this meſſage, I am not ſo well ſeen in the region of his friends, as to be able to make choice of a particular; my Lord Treaſurer, the Lord *Knollys*, or any of his neareſt friends, ſhould not be truſted with it; for they may go too far, and perhaps work contrary to his Majeſty's ends. Thoſe which occur to me, and my Lord *Hay*, my Lord *Burleigh* (of *England* I mean,) and Sir *Robert Carre*.

My Lady *Somerſet* hath been re-examined, and his Majeſty is found both a true prophet and a moſt juſt King in that ſcruple he made; for now ſhe expoundeth the word He, that ſhould ſend the tarts to *Elwys*'s wife, to be of *Overbury* and not of *Somerſet*; but for the perſon that ſhould bid her, ſhe ſaith it was *Northampton* or *Weſton*, not pitching upon certainty, which giveth ſome advantage to the evidence.

YESTERDAY being Wedneſday, I ſpent four or five hours with the judges, whom his Majeſty deſign'd to take conſideration with, the four judges of the King's-bench, of the evidence againſt *Somerſet*: They all concur in opinion, that the queſtioning and drawing him on to trial is moſt honourable and juſt, and that the evidence is fair and good.

HIS Majeſty's letter to the Judges concerning the *Commendams* was full of magnanimity and wiſdom. I perceive his Majeſty is never leſs alone, than when he is alone; for I am ſure there was no body by him to inform him, which made me admire it the more.

THE judges have given a day over, till the ſecond Saturday of the next term; ſo as that matter may endure farther conſideration, for his Majeſty not only not to loſe ground, but to win ground.

TO-MORROW is appointed for the examination of *Somerſet*, which by ſome infirmity of the Duke of *Lenox* was put off from this day. When this is done, I will write more fully, ever reſting,

Your true and devoted ſervant,

FR. BACON.

May 2. 1616.

CXXXVII.

CXXXVII. To Sir GEORGE VILLIERS, of *Somerſet*'s arraignment.

SIR,

I AM far enough from opinion, that the redintegration or reſuſcitation of *Somerſet*'s fortune can ever ſtand with his Majeſty's honour and ſafety; and therein I think I expreſs'd my ſelf fully to his Majeſty in one of my former letters; and I know well any expectation or thought abroad will do much hurt. But yet the glimmering of that which the King hath done to others by way of talk to him, cannot hurt as I conceive; but I would not have that part of the meſſage as from the King, but added by the meſſenger as from himſelf. This I remit to his Majeſty's princely judgment.

FOR the perſon, tho' he truſt the lieutenant well, yet it muſt be ſome new man; for in theſe caſes, that which is ordinary worketh not ſo great impreſſions as that which is new and extraordinary.

THE time I wiſh to be the Tueſday, being the even of his lady's arraignment: For, as his Majeſty firſt conceived, I would not have it ſtay in his ſtomach too long, leſt it ſour in the digeſtion; and to be too near the time, may be thought but to tune him for that day.

I ſend herewithal the ſubſtance of that which I purpoſe to ſay nakedly, and only in that part which is of tenderneſs; for that I conceive was his Majeſty's meaning.

IT will be neceſſary, becauſe I have diſtributed parts to the two ſerjeants, (as that paper doth expreſs,) and they underſtand nothing of his Majeſty's pleaſure of the manner of carrying the evidence more than they may gueſs by obſervation of my example, (which they may aſcribe as much to my nature as to direction:) Therefore that his Majeſty would be pleaſed to write ſome few words to us all, ſigned with his own hand, that the matter itſelf being tragical enough, bitterneſs and inſulting be forborn; and that we remember our part to be to make him delinquent to the peers, and not odious to the people. That part of the evidence of the lady's expoſition of the pronoun (*he*) which was firſt caught hold of by me, and afterwards by his Majeſty's ſingular wiſdom and conſcience excepted to, and now is by her re-examination retracted, I have given order to Serjeant *Montague* (within whoſe part it falleth) to leave it out of the evidence. I do yet crave pardon, if I do not certify touching the point of law for reſpiting the judgment, for I have not fully adviſed with my Lord Chancellor concerning it, but I will advertiſe it in time.

I ſend his Majeſty the Lord Steward's commiſſion in two ſeveral inſtruments, the one to remain with my Lord Chancellor, which is that which is written in ſecretary-hand for his warrant, and is to paſs the ſignet; the other, that whereunto the great ſeal is to be affixed, which is in chancery-hand; his Majeſty is to ſign them both, and to tranſmit the former to the ſignet, if the Secretaries either of them be there; and both of them are to be returned to me with all ſpeed. I ever reſt,

Your true and devoted ſervant,

May 5. 1616. FR. BACON.

CXXXVIII. To the KING, about *Somerſet*'s examination.

It may pleaſe your Majeſty,

WE have done our beſt endeavours to perform your Majeſty's commiſſion, both in matter and manner, for the examination of my Lord of *Somerſet*; wherein that which paſſed, for the general, was to this effect; That he was to know his own caſe, for that his day of trial could not be far off; but that this day's work was that which would conduce to your Majeſty's juſtice little or nothing, but to your mercy much, if he did lay hold upon it; and therefore might do him good, but could do him no hurt. For as for your juſtice, there had been taken great and grave opinion, not only of ſuch judges as he may think violent, but of the moſt ſad and moſt temperate of the kingdom, who ought to underſtand the ſtate of the proofs, that the evidence was full to convict him, ſo as there needeth neither confeſſion, nor ſupply of examination. But for your Majeſty's mercy (altho' he were not to expect we ſhould make any promiſe) we did aſſure him, that your Majeſty was compaſſionate of him if he gave you ſome ground whereon to work; that as long as he ſtood upon his innocency and trial, your Majeſty was tyed in honour to proceed according to juſtice; and that he little underſtood, being a cloſe priſoner, how much the expectation of the world, beſides your love to juſtice itſelf, engaged your Majeſty, whatſoever your inclinations were: But nevertheleſs that a frank and clear confeſſion might open the gate of mercy, and help to ſatisfy the point of honour.

THAT his lady (as he knew, and that after many oaths and imprecations to the contrary) had nevertheleſs in the end been touched with remorſe, confeſſed that ſhe that led him to offend, might lead him likewiſe to repent of his offence: That the confeſſion of one of them could not fitly do either of them much good, but the confeſſion of both of them might work ſome farther effect towards both: And therefore, in concluſion, we wiſh'd him not to ſhut the gate of your Majeſty's mercy againſt himſelf, by being obdurate any longer. This was the effect of that which was ſpoken, part by one of us, part by another, as it fell out; adding farther, that he might well diſcern who ſpake in us in the courſe we held; for that commiſſioners for examination might not preſume ſo far of themſelves.

NOT to trouble your Majeſty with circumſtances of his anſwers, the ſequel was no other, but that we found him ſtill not to come any degree farther on to confeſs; only his behaviour was very ſober, and modeſt, and mild, (differing apparently from other times;) but yet, as it ſeem'd, reſolv'd to have his trial.

THEN did we proceed to examine him upon divers queſtions touching the empoiſonment, which indeed were very material and ſupplemental to the former evidence; wherein either his affirmatives gave ſome light, or his negatives do greatly falſify him in that which is apparently proved.

WE made this farther obſervation; that when we aſked him ſome queſtion that did touch the prince or ſome foreign practice, (which we did very ſparingly at this time,) yet he grew a little ſtirr'd, but in the queſtions of the empoiſonment very cold and modeſt. Thus not thinking it neceſſary to trouble your Majeſty with any farther particulars, we end with prayer to God ever to preſerve your Majeſty.

Your Majeſty's moſt loyal and faithful ſervant,

FR. BACON.

Poſtſcript. If it ſeem good unto your Majeſty, we think it not amiſs ſome preacher (well choſen) had acceſs to my Lord of *Somerſet* for his preparing and comfort, although it be before his trial.

CXXXIX. An Expoſtulation to the Lord Chief Juſtice Coke.

My very good Lord,

Eccleſ. xi. 4. THOUGH it be true, that who conſidereth the wind and the rain, ſhall neither ſow nor reap; yet there is a ſeaſon for every action, and ſo there is a time to ſpeak, and a time to keep ſilence. There is a time when the words of a poor ſimple man may profit; and that poor man in the preacher, which delivered the city by his wiſdom, found that without this opportunity the power both of wiſdom and eloquence loſe but their labour, and cannot charm the deaf adder. God therefore, before his Son that bringeth mercy, ſent his ſervant the trumpeter of repentance to level every high hill, to prepare the way before him, making it ſmooth and ſtreight: And as it is in ſpiritual things, where Chriſt never comes before his way-maker hath laid even the heart with ſorrow and repentance, (ſince ſelf-conceited and proud perſons think themſelves too good and too wiſe to learn of their inferiors, and therefore need not the phyſician;) ſo in the rules of earthly wiſdom, it is not poſſible for nature to attain any mediocrity of perfection, before ſhe be humbled by knowing herſelf and her own ignorance. Not only knowledge, but alſo every other gift (which we call the gifts of fortune) have power to puff up earth: Afflictions only level theſe mole-hills of pride, plough the heart, and make it fit for wiſdom to ſow her ſeed, and for grace to bring forth her increaſe. Happy is that man therefore, both in regard of heavenly and earthly wiſdom, that is thus wounded to be cured, thus broken to be made ſtraight; thus made acquainted with his own imperfections that he may be perfected.

Supposing this to be the time of your affliction, that which I have propounded to myſelf is, by taking this ſeaſonable advantage, like a true friend, (though far unworthy to be counted ſo) to ſhew you your true ſhape in a glaſs; and that not in a falſe one to flatter you, nor yet in one that ſhould make you ſeem worſe than you are, and ſo offend you; but in one made by the reflection of your own words and actions; from whoſe light proceeds the voice of the people, which is often not unfitly called the voice of God. But therein (ſince I have purpoſed a truth) I muſt intreat liberty to be plain, a liberty that at this time I know not whether or no I may uſe ſafely, I am ſure at other times I could not; yet of this reſolve yourſelf, it proceedeth from love and a true deſire to do you good; that you knowing the general opinion, may not altogether neglect or contemn it, but mend what you find amiſs in yourſelf, and retain what your judgment ſhall approve; for to this end ſhall truth be delivered as naked as if yourſelf were to be anatomized by the hand of opinion. All men can ſee their own profit, that part of the wallet hangs before. A true friend (whoſe worthy office I would perform, ſince I fear, both yourſelf and all great men want ſuch, being themſelves true friends to few or none) is firſt to ſhew the other, and which is from your eyes.

First therefore behold your errors; in diſcourſe you delight to ſpeak too much, not to hear other men; this, ſome ſay, becomes a pleader not a judge; for by this ſometimes your affections are intangled with a love of your own arguments,

arguments, tho' they be the weaker; and rejecting of thoſe, which, when your affections were ſettled, your own judgment would allow for ſtrongeſt. Thus while you ſpeak in your own element, the law, no man ordinarily equals you; but when you wander (as you often delight to do) you then wander indeed, and give never ſuch ſatisfaction as the curious time requires. This is not cauſed by any natural defect, but firſt for want of election, when you having a large and fruitful mind, ſhould not ſo much labour what to ſpeak, as to find what to leave unſpoken: Rich ſoils are often to be weeded.

SECONDLY, You cloy your auditory when you would be obſerved; ſpeech muſt be either ſweet or ſhort.

THIRDLY, You converſe with books, not men, and books ſpecially human; and have no excellent choice with men, who are the beſt books: for a man of action and employment you ſeldom converſe with, and then but with your underlings; not freely, but as a ſchoolmaſter with his ſcholars, ever to teach, never to learn: But if ſometimes you would in your familiar diſcourſe hear others, and make election of ſuch as know what they ſpeak, you ſhould know many of theſe tales you tell to be but ordinary; and many other things, which you delight to repeat and ſerve in for novelties, to be but ſtale: As in your pleadings, you were wont to inſult over miſery, and to inveigh bitterly at the perſons (which bred you many enemies, whoſe poiſon yet ſwelleth, and the effects now appear;) ſo are you ſtill wont to be a little careleſs in this point, to praiſe or diſgrace upon ſlight grounds, and that ſometimes untruly; ſo that your reproofs or commendations are for the moſt part neglected and contemned; when the cenſure of a judge (coming ſlow but ſure) ſhould be a brand to the guilty, and a crown to the virtuous. You will jeſt at any man in publick without reſpect of the perſon's dignity or your own: This diſgraceth your gravity, more than it can advance the opinion of your wit; and ſo do all actions which we ſee you do directly with a touch of vain-glory, having no reſpect to the true end. You make the law to lean too much to your opinion, whereby you ſhew yourſelf to be a legal tyrant, ſtriking with that weapon where you pleaſe, ſince you are able to turn the edge any way: For thus the wiſe maſter of the law gives warning to young ſtudents, that they ſhould be wary, leſt while they hope to be inſtructed by your integrity and knowledge, they ſhould be deceived with your ſkill armed with authority. Your too much love of the world is too much ſeen; when having the living of * a thouſand, you relieve few or none: The hand that has taken ſo much, can it give ſo little? Herein you ſhew no bowels of compaſſion, as if you thought all too little for yourſelf; or that God hath given you all that you have (if you think wealth to be his gift, I mean that you get well, for I know ſure the reſt is not;) only to that end you ſhould ſtill gather more, and never be ſatisfied; but try how much you would gather, to account for all at the great and general audit-day. We deſire you to amend this, and let your poor tenants in *Norfolk* find ſome comfort; where nothing of your eſtate is ſpent towards their relief, but all brought up hither to the impoveriſhing of your country.

* 10000 *l.* Cab.

IN your laſt, which might have been your beſt piece of ſervice to the ſtate, affectioned to follow that old rule, which giveth juſtice leaden heels and iron hands; you uſed too many delays till the delinquents hands were looſed, and yours bound: In that work you ſeemed another *Fabius*, where the humour of *Marcellus* would have done better; what need you have ſought more evidences than enough? while you pretended the finding out of more (miſſing your aim) you diſcredited what you had found. This beſt judgments

think;

think; though you never uſed ſuch ſpeeches as are fathered upon you, yet you might well have done it, and but rightly; for this crime was ſecond to none, but the powder-plot: That would have blown up all at one blow, a merciful cruelty; this would have done the ſame by degrees, a lingring but a ſure way; one might by one be called out, till all oppoſers had been removed.

Besides, that other plot was ſcandalous to *Rome*, making popery odious in the ſight of the whole world: This hath been ſcandalous to the truth of the whole goſpel; and ſince the firſt nullity to this inſtant, when juſtice hath her hands bound, the devil could not have invented a more miſchievous practice to our ſtate and church than this hath been, is, and is like to be. God avert the evil.

But herein you committed another fault: That as you were too open in your proceedings, and ſo taught them thereby to defend themſelves; ſo you gave them time to undermine juſtice, and to work upon all advantages both of affections and honour and opportunity and breach of friendſhip; which they have ſo well followed, ſparing neither pains nor coſts, that it almoſt ſeemeth an higher offence in you to have done ſo much indeed, than that you have done no more; you ſtopt the confeſſions and accuſations of ſome, who perhaps, had they been ſuffered, would have ſpoken enough to have removed ſome ſtumbling-blocks out of your way; and that you did not this in the favour of any one, but of I know not what preſent unadviſed humours, ſuppoſing enough behind to diſcover all; which fell not out ſo. Howſoever, as the apoſtle ſaith in another caſe, you *went not rightly to the truth*; and therefore, though you were to be commended for what you did, yet you were to be reprehended for many circumſtances in the doing; and doubtleſs God hath an eye in this croſs to your negligence, and the briars are left to be pricks in your ſides and thorns in your eyes. But that which we commend you for, are thoſe excellent parts in nature and knowledge in the law, which you are endowed withal; but theſe are only good in their good uſe. Wherefore we thank you heartily for ſtanding ſtoutly in the commonwealth's behalf; hoping it proceedeth not from a diſpoſition to oppoſe greatneſs, (as your enemies ſay) but to do juſtice, and deliver truth indifferently without reſpect of perſons; and in this we pray for your proſperity, and are ſorry that your good actions ſhould not always ſucceed happily. But in the carriage of this you were faulty; for you took it in hand in an evil time, both in reſpect of the preſent buſineſs which is interrupted, and in regard of his preſent ſickneſs whom it concerned, whereby you diſunited your ſtrength, and made a gap for the enemies to paſs out at, and to return and aſſault you.

But now ſince the caſe ſo ſtandeth, we deſire you to give way to power, and ſo to fight that you be not utterly broken, but reſerved intirely to ſerve the commonwealth again, and to do what good you can, ſince you cannot do all the good you would; and ſince you are fallen upon this rock, caſt out the goods to ſave the bottom; ſtop the leaks and make towards land; learn of the ſteward to make friends of the unrighteous mammon. Thoſe *Spaniards* in *Mexico* who were chaſed of the *Indians*, tell us what to do with our goods in our extremity, they being to paſs over a river in their flight, as many as caſt away their gold ſwam over ſafe; but ſome more covetous, keeping their gold, were either drowned with it, or overtaken and ſlain by the ſavages: you have received, now learn to give. The beaver learns us this leſſon, who being hunted for his ſtones, bites them off: you cannot but have much of your eſtate (pardon my plainneſs) ill got; think how much of that you never

ſpake

ſpake for, how much by ſpeaking unjuſtly or in unjuſt cauſes. Account it then a bleſſing of God, if thus it may be laid out for your good, and not left for your heir, to haſten the waſting of ſo much of the reſt, perhaps of all: for ſo we ſee God oftentimes proceeds in judgment with many haſty gatherers; you have enough to ſpare, being well laid to turn the tide, and fetch all things again. But if you eſcape, I ſuppoſe it worthy of an (if,) ſince you know the old uſe, that none called in queſtion muſt go away uncenſured: Yet conſider that accuſations make wounds, and leave ſcars; and though you ſee the toil behind your back, your ſelf free, and the covert before, yet remember there are ſtands: truſt not a reconciled enemy; and think the peace is but to ſecure you for farther advantage, or expect a ſecond and a third encounter; the main battle, the wings are yet unbroken, they may charge you at an inſtant, or death before them; walk therefore circumſpectly, and if at length by means of our good endeavours and yours, you recover the favour that you have loſt; give God the glory in action, not in words only; and remember us with ſenſe of your paſt misfortune, whoſe eſtate hath, doth, and may hereafter lie in the power of your breath.

THERE is a great mercy in diſpatch, delays are tortures, wherewith by degrees we are rent out of our eſtates*; do not you (if you be reſtored) as ſome others do, fly from the ſervice of virtue to ſerve the time, as if they repented their goodneſs, or meant not to make a ſecond hazard in God's houſe; but rather let this croſs make you zealous in God's cauſe, ſenſible in ours, and more ſenſible in all; which expreſs thus. You have been a great enemy to papiſts, if you love God be ſo ſtill, but more indeed than heretofore; for much of your zeal was heretofore waſted in words: call to remembrance that they were the perſons that propheſied of that croſs of yours long before it happened; they ſaw the ſtorm coming, being the principal contrivers and furtherers of the plot, the men that blew the coals, heat the iron, and made all things ready; they owe you a good turn, and will, if they can, pay it you; you ſee their hearts by their deeds, prove then your faith ſo too: the beſt good work you can do, is to do the beſt you can againſt them, that is to ſee the law ſeverely, juſtly, and diligently executed.

AND now we beſeech you, my lord, be ſenſible both of the ſtroke and hand that ſtriketh; learn of *David* to leave *Shimei*, and call upon God; he hath ſome great work to do, and he prepareth you for it; he would neither have you faint, nor yet bear this croſs with a *ſtoical* reſolution: there is a chriſtian mediocrity, worthy of your greatneſs. I muſt be plain, perhaps raſh; had ſome notes which you had taken at ſermons been written in your heart to practiſe, this work had been done long ago, without the envy of your enemies; but when we will not mind our ſelves, God (if we belong to him) takes us in hand; and becauſe he ſeeth that we have unbridled ſtomachs, therefore he ſends outward croſſes, which, while they cauſe us to mourn, do comfort us, being aſſured teſtimonies of his love that ſends them. To humble our ſelves therefore before God, is the part of a Chriſtian; but for the world and our enemies the counſel of the poet is apt,

Tu ne cede malis, ſed contra audentior ito. AEneid. vi. 95.

THE laſt part of this counſel you forget, yet none need be aſhamed to make uſe of it, that ſo being armed againſt caſualties, you may ſtand firm againſt the aſſaults on the right hand, and on the left. For this is certain, the mind

* My Lord *Bacon* obſerves elſewhere, that the ſcripture ſaith, there be that turn judgment into wormwood; and ſaith he, ſurely there be alſo that turn it into vinegar; for injuſtice maketh it bitter, and delays make it ſour. Eſſay LVII. Vol. III. p. 377.

that is moſt prone to be puſt up with proſperity, is moſt weak and apt to be dejected with the leaſt puff of adverſity. Indeed ſhe is ſtrong enough to make an able man to ſtagger, ſtriking terrible blows; but true Chriſtian wiſdom gives us armour of proof againſt all aſſaults, and teacheth us in all eſtates to be content: for though ſhe cauſe all our trueſt friends to declare themſelves our enemies; though ſhe give heart then to the moſt cowardly to ſtrike us; though an hour's continuance countervails an age of proſperity; though ſhe caſt in our diſh all that ever we have done; yet hath ſhe no power to hurt the humble and wiſe, but only to break ſuch as too much proſperity hath made ſtiff in their own thoughts, but weak indeed; and fitted for renewing: When the wiſe rather gather from thence profit and wiſdom; by the example of *David*, who ſaid, *Before I was chaſtiſed I went aſtray.* Now then he that knoweth the right way, will look better to his footing. *Cardan* ſaith, that weeping, faſting, and ſighing, are the chief purgers of grief; indeed naturally they do aſſuage ſorrow; but God in this caſe is the only and beſt phyſician; the means he hath ordained are the advice of friends, the amendment of our ſelves; for amendment is both phyſician and cure. For friends, although your lordſhip be ſcant, yet I hope you are not altogether deſtitute; if you be, do but look upon good books; they are true friends, that will neither flatter nor diſſemble: be you but true to your ſelf, applying what they teach unto the party grieved, and you ſhall need no other comfort nor counſel. To them, and to God's holy Spirit, directing you in the reading of them, I commend your lordſhip; beſeeching him to ſend you a good iſſue out of theſe troubles, and from henceforth to work a reformation in all that is amiſs, and a reſolute perſeverance, proceeding, and growth, in all that is good; and that for his glory, the bettering of your ſelf, this church, and commonwealth; whoſe faithful ſervant whilſt you remain,

I remain a faithful ſervant to you,

FR. BACON.

CXL. To Sir GEORGE VILLIERS.

SIR,

THE time is, as I ſhould think, now or never, for his Majeſty to finiſh his good meaning towards me; if it pleaſe him to conſider, what is paſt, and what is to come.

IF I would tender my profit, and oblige men unto me by my place and practice, I could have more profit than I could deviſe; and could oblige all the world, and offend none; which is a brave condition for a man's private. But my heart is not on theſe things. Yet on the other ſide, I would be ſorry that worthleſs perſons ſhould make a note that I get nothing but pains and enemies; and a little popular reputation, which followeth me whether I will or no. If any thing be to be done for your ſelf, I ſhould take infinite contentment, that my honour might wait upon yours; but I would be loth it ſhould wait upon any man's elſe. If you would put your ſtrength to this buſineſs, it is done; and that done, many things more will begin. God keep you ever. I reſt

Your true and devoted ſervant,

May 30. 1616. FR. BACON.

CXLI.

CXLI. To the KING, about the *Commendams*.

May it pleaſe your moſt excellent Majeſty,

I AM not ſwift to deliver any thing to your Majeſty, before it be well weighed. But now that I have informed my ſelf of as much as is neceſſary, touching this proceeding of the judges to the argument of the *Commendams*, (notwithſtanding your Majeſty's pleaſure ſignified by me, upon your Majeſty's commandment, in preſence of my Lord Chancellor and the Biſhop of *Wincheſter* to the contrary;) I do think it fit to advertiſe your Majeſty what hath paſſed; the rather, becauſe I ſuppoſe the judges, ſince they perform'd not your commandment, have at leaſt given your Majeſty their reaſons of failing therein; I being to anſwer for the doing your Majeſty's commandments, and they for the not doing.

I DID conceive, that in a cauſe that concerned your Majeſty and your royal power, the judges having heard your attorney-general argue the *Saturday* before, would of themſelves have taken farther time to be adviſed.

AND (if I fail not in memory) my Lord *Coke* received from your Majeſty's ſelf, as I take it, a precedent commandment in *Hilary* term, that both in the *rege inconſulto*, and in the *Commendams*, your attorney ſhould be heard to ſpeak, and then ſtay to be made of farther proceedings, till my lord had ſpoken with your Majeſty.

NEVERTHELESS, hearing that the day appointed for the judges argument held, contrary to my expectation, I ſent on *Thurſday* in the evening (having received your Majeſty's commandment but the day before in the afternoon,) a letter to my Lord *Coke*; whereby I let him know, that upon ſome report of my Lord of *Wincheſter*, (who by your commandment was preſent at my argument of that which paſſed,) it was your Majeſty's expreſs pleaſure, that no farther proceedings ſhould be, until you had conferr'd with your judges: which your Majeſty thought to have done at your being now laſt in town; but by reaſon of your many and weighty occaſions, your princely times would not ſerve; and that it was your pleaſure he ſhould ſignify ſo much to the reſt of the judges, whereof his lordſhip might not fail. His anſwer by word to my man was, that it were good the reſt of the judges underſtood ſo much from my ſelf; whereupon I (that cannot ſkill of ſcruples in matter of ſervice) did write on *Friday* three ſeveral letters of like content to the judges of the common pleas, and the barons of the exchequer, and the other three judges of the King's-bench, mentioning in that laſt my particular letter to my Lord Chief Juſtice.

THIS was all I did, and thought all had been ſure; in ſo much as the ſame day being appointed in chancery for your Majeſty's great cauſe, (followed by my Lord *Hunſden**) I writ two other letters to both the Chief Juſtices, to put them in mind of aſſiſting my Lord Chancellor at the hearing. And when my Lord Chancellor himſelf took ſome notice upon that occaſion openly in the chancery, that the *Commendams* could not hold preſently after, I heard the judges were gone about the *Commendams*; which I thought at firſt had been only to adjourn the court, but I heard after that they proceeded to argument.

* This caſe is reported by my Lord *Hobart*, p. 109.

IN this their doing, I conceive they muſt either except to the nature of the commandment, or to the credence thereof; both which, I aſſure my ſelf, your Majeſty will maintain.

FOR if they ſhould ſtand upon the general ground, † *nulli negabimus, nulli differemus juſtitiam*, it receiveth two anſwers. The one, that reaſona-

† *Mag. Chart.*

ble

ble and mature advice may not be confounded with delay; and that they can well alledge when it pleaſeth them. The other is, that there is a great difference between a caſe merely between ſubject and ſubject, and where the King's intereſt is in queſtion directly or by conſequence. As for the attorney's place and commiſſion, it is as proper for him to ſignify the King's pleaſure to the judges, as for the ſecretary to ſignify the ſame to the privy council; and ſo it hath ever been.

THESE things were a little ſtrange if there came not ſo many of them together, as the one maketh the other ſeem leſs ſtrange: but your Majeſty hath fair occaſions to remedy all, with ſmall aid; I ſay no more for the preſent.

I WAS a little plain with my Lord *Coke* in theſe matters; and when his anſwer was, that he knew all theſe things; I ſaid he could never profit too much, in knowing himſelf and his duty.

CXLII. A memorial for his MAJESTY, corrected with Sir *Fr. Bacon*'s own hand. 1616.

IT ſeemeth this year of the fourteenth of his Majeſty's reign, being a year of a kind of majority in his government, is conſecrate to juſtice: ‖ which as his Majeſty hath performed to his ſubjects in this late memorable occaſion, ſo he is now to render and perform to himſelf, his crown and poſterity.

THAT his council ſhall perceive by that which his Majeſty ſhall now communicate with them, that the maſs of his buſineſs is continually prepared in his own royal care and cogitations, howſoever he produceth the ſame to light, and to act *per opera dierum* †.

THAT his Majeſty ſhall make unto them now a declarative of two great cauſes, whereof he doubteth not they have heard by glimpſes; the one concerning his high court of chancery, the other concerning the church and prelacy; but both of them deeply touching his prerogative and ſovereignty and the flowers of his crown.

THAT about the end of *Hilary* term laſt, there came to his Majeſty's ears, only by common voice and report, not without great rumour and wonder, that there was ſomewhat done in the King's-bench the laſt day of that term, whereby his chancery ſhould be pulled down, and be brought in queſtion for *Praemunire*; being the moſt heinous offence after treaſon, and felony, and miſpriſion of treaſon; and that the time ſhould be when the chancellor lay at the point of death.

THAT his Majeſty was ſo far from hearing of this by any complaint from his chancellor (who then had given over worldly thoughts;) that he wrote letters of comfort to him upon this accident, before he heard from him; and for his attorney, his Majeſty challenged him for not advertiſing him of that, of which it was proper for his Majeſty to be informed from him.

THAT his Majeſty being ſenſible of this ſo great novelty and perturbation in his courts of juſtice, nevertheleſs uſed this method and moderation, that

‖ By the laws, ſeveral ages are aſſigned to perſons for ſeveral purpoſes: and by the common law the fourteenth year is a kind of majority, and accounted an age of diſcretion. At that time a man may agree or diſagree to a precedent marriage: The heir in ſocage may reject the guardian appointed by law, and chooſe a new one: and the woman at that age ſhall be out of ward, *&c. Stephens.*

† *Per opera dierum*, alluding to the gradations almighty God was pleaſed to obſerve in the creating of the world. In this paragraph Sir *Francis Bacon* inſinuates, what he expreſly declares Vol. III. Eſſay xlviii. p. 369. that in all negotiations of difficulty, a man muſt firſt prepare buſineſs, and ſo ripen it by degrees. *Stephens.*

before

before he would examine this great affront and disgrace offered to his chancery and chancellor, he would first inform himself whether the chancery or chancellor were in fault; and whether the former precedents of chancery did warrant the proceedings there after judgment passed at common law, (which was the thing in question;) and thereupon his Majesty called his learned counsel to him, and commanded them to examine the precedents of chancery, and to certify what they found: which they did; and by their certificate it appeareth, that the precedents of that kind were many and precise in the point, and constant, and in good times, and allowed many times by the judges themselves.

That after this his Majesty received from the Lord Chancellor a note, whereby the question was clearly set down and contained within the proper bounds of the present doubt; being, Whether upon apparent matter of equity, which the judges of the law by their place and oath cannot meddle with or relieve, (if a judgment be once passed at common law) the subject shall perish, or that the chancery shall relieve him; and whether there be any statute of *Praemunire* or other, to restrain this power in the Chancellor; which case upon the request of the Lord Chancellor, his Majesty likewise referred to his learned council, (and the Prince's Attorney Mr. *Walter* was joined with them:) who, upon great advice and view of the original records themselves, certified the chancery was not restrained by any statute in that case.

That his Majesty again required his learned counsel to call the clerks of the King's-bench to them, and to receive from them any precedents of indictments in the King's-bench against the chancery for proceeding in the like case; who produced only two precedents, being but indictments offered or found, upon which there was no other proceeding; and the clerks said, they had used diligence and could find no more.

That his Majesty, after he had received this satisfaction that there was ground for that the chancery had done, and that the chancery was not in fault, he thought then it was time to question the misdemeanor and contempt in scandalizing and dishonouring his justice in that high court of chancery in so odious a manner; and commanded his Attorney-General, with the advice of the rest of his learned counsel, to prosecute the offenders in the star-chamber, which is done; and some of them are fled, and others stand out and will not answer.

That there resteth only one part more towards his Majesty's complete information in this cause: which is to examine that which was done in open court the said last day of *Hilary* term, and whether the judges of the King's-bench did commit any excess of authority; or did animate the offenders otherwise, than according to their duty and place; which enquiry, because it concerneth the judges of a court to keep order and decorum, his Majesty thinketh not so convenient to use his learned counsel therein, but will commit the same to some of the council-table, and his learned counsel to attend them.

This declared, or what else his Majesty in his own high wisdom shall think good; it will be fit time to have the certificate of the learned counsel openly read.

His Majesty may, if he please, forbear to publish at this time at the table the committees; but signify his pleasure to themselves afterwards.

The committees named by his Majesty, were the Archbishop of *Canterbury*, Secretary *Lake*, the Chancellor of the Exchequer, and the Master of the Rolls.

THIS Report is to be prefixed, to be given in by *Wedneſday* at night, that his Majeſty may communicate it with his council, and take farther order on *Thurſday* thereupon, if his Majeſty be ſo pleaſed.

AT this declaration, it is his Majeſty's direction, (to the end things may appear to be the more evenly carried) that neither my Lord Chancellor nor my Lord Chief Juſtice be preſent.

BUT then when his Majeſty entereth into the ſecond declarative, my Lord Chancellor is to be called for: but my Lord Chief Juſtice not; becauſe it concerneth him.

FOR the ſecond declarative, that his Majeſty hath reaſon to be offended and grieved, in that which paſſed touching the *Commendams*, both in matter and manner: For the matter, that his Majeſty's religious care of the church and of the prelacy, and namely of his lords ſpiritual the biſhops, may well appear; firſt, in that he hath utterly expelled thoſe ſectaries or inconformable perſons that ſpurned at the government; ſecondly, that by a ſtatute made in the firſt year of his reign, he hath preſerved their livings from being waſted and dilapidated by long leaſes; and therein bound himſelf and his crown and ſucceſſion: And laſtly, that they ſee two biſhops privy counſellors at the table, which hath not been of late years.

THAT agreeably to this his Majeſty's care and good affection, hearing that there was a caſe of the Biſhop of *Lincoln*'s, wherein his Majeſty's ſupreme power of granting *Commendams* (which in reſpect of the exility of biſhopricks is ſometimes neceſſary) was queſtioned to be overthrown or weakened; he commanded his Attorney-General, not only to have care to maintain it according to his place, but alſo that he ſhould relate to his Majeſty how things paſſed; and did alſo command the Biſhop of *Wincheſter* to be preſent at the publick argument of the caſe; and to report to his Majeſty the true ſtate of that queſtion, and how far it extended.

THIS being accordingly done; then upon report of the Biſhop of *Wincheſter* in preſence of the Lord Chancellor, his Majeſty thought it neceſſary, that before the judges proceeded to declare their opinion they ſhould have conference with his Majeſty, to the end to ſettle ſome courſe, that juſtice might be done, and his regal power (whereof his crown had been ſo long veſted) not touched nor diminiſhed: And thereupon commanded his attorney (who by his place ought properly to ſignify his Majeſty's pleaſure to his judges, as his ſecretary doth to his privy council) in the preſence of the Lord Chancellor and the Biſhop, to ſignify his pleaſure to the judges, that becauſe his Majeſty thought it needful to conſult with them in that caſe before they proceeded to judgment; and that his Majeſty's buſineſs (as they all knew) was very great, and *Midſummer* term ſo near at hand, and the cauſe argued by his attorney ſo lately, they ſhould put off the day till they might adviſe with his Majeſty at his next coming to town. That his Majeſty's attorney ſignified ſo much by his letters (the next day after he had received his commandment) to all the judges, and that in no imperious manner, but alledging the circumſtances aforeſaid, that the caſe was lately argued, his Majeſty's buſineſs great, another term at hand, *&c.*

NOW followeth the manner that was held in this, which his Majeſty conceiveth was not only indiſcreet, but preſumptuous and contemptuous.

FOR firſt, they diſobeyed this his Majeſty's commandment, and proceeded to publick argument notwithſtanding the ſame; and thought it enough to certify only their mind to his Majeſty.

SECONDLY,

SECONDLY, in a general letter under all their hands (howſoever it may be upon divided opinion) they alledge unto his Majeſty their oath; and that his Majeſty's commandment (for the attorney's letter was but the caſe that it was wrapped in) was againſt law; as if maturity and a deliberate proceeding were a delay, or that commandment of ſtay in reſpect of ſo high a queſtion of ſtate and prerogative, were like a commandment gotten by importunity, or in favour of a ſuitor.

THIRDLY, above all, it is to be noted and juſtly doubted, that upon the contrary, in this that they have done, they have broken their oath; for their oath is to counſel the King when they ſhall be called; and if when the King calleth them to counſel, they will do the deed firſt, and give him counſel after, this is more than a ſimple refuſal.

LASTLY, it is no new thing upon divers particular occaſions, of a far higher nature than the conſulting with their Sovereign about a cauſe of great moment, to put off days, and yet no breach of oath. And there was another fair paſſage well known to my Lord *Coke*, that he might have uſed if it had pleaſed him; for that very day was appointed for the King's great cauſe in the chancery, both for my Lord *Hobart* and him; which cauſe ought to have had precedence afore any private cauſe, as they would have this ſeem to be.

TO this letter his Majeſty made a moſt princely and prudent anſwer, which I leave to itſelf.

UPON this declaration his Majeſty will be pleaſed to have the judges letter and his own letter read.

THEN his Majeſty (for his part as I conceive) will be pleaſed to aſk the advice of his council as well for the ſtay of the new day which is *Saturday* next, as for the cenſure and reproof of the contempt paſſed: for though the judges are a reverend body, yet they are (as all ſubjects are) corrigible.

CXLIII. To Sir GEORGE VILLIERS.

SIR,

THE King giveth me a noble choice; and you are the man my heart ever told me you were. Ambition would draw me to the latter part of the choice; but in reſpect of my hearty wiſhes, that my Lord Chancellor may live long; and the ſmall hopes I have, that I ſhall live long myſelf; and above all, becauſe I ſee his Majeſty's ſervice daily and inſtantly bleedeth; towards which, I perſuade myſelf (vainly perhaps, but yet in mine own thoughts firmly and conſtantly) that I ſhall give, when I am of the table, ſome effectual furtherance, (as a poor thread of the labyrinth, which hath no other virtue, but an united continuance, without interruption or diſtraction;) I do accept of the former to be counſellor for the preſent, and to give over pleading at bar; let the other matter reſt upon my proof, and his Majeſty's pleaſure, and the accidents of time. For to ſpeak plainly, I would be loth that my Lord Chancellor, to whom I owe moſt after the King and your ſelf, ſhould be locked to his ſucceſſor, for any advancement or gracing of me. So I ever remain

Your true and moſt devoted, and moſt obliged ſervant,

June 3. 1616. FR. BACON.

CXLIV.

CXLIV. To Sir GEORGE VILLIERS.

SIR,

I SEND his Majeſty a draught of the act of council concerning the judges letter, penned as near as I could to his Majeſty's inſtructions received in your preſence. I then told his Majeſty my memory was not able to keep way with his; and therefore his Majeſty will pardon me for any omiſſions or errors, and be pleaſed to ſupply and reform the ſame. I am preparing ſome other materials for his Majeſty's excellent hand, concerning buſineſs that is coming on: For ſince his Majeſty hath renewed my heart within me, methinks I ſhould double my endeavours. God ever preſerve and proſper you. I reſt,

Your moſt devoted and bounden ſervant,

June 12. 1616. FR. BACON.

CXLV. Touching the *Commendams*.

† At *Whitehall* the ſixth of *June*, *Anno* 1616.

Preſent the KING's MAJESTY.

Lord Archbiſhop of *Cant.*
Lord Chancellor.
Lord Treaſurer.
Lord Privy Seal.
Lord Chamberlain.
Duke of *Lenox.*
Lord *Zouche.*
Biſhop of *Winton.*
Lord *Knollys.*
Lord *Wotton.*
Lord *Stanhope.*
Lord *Fenton.*
Mr. Vice-Chamberlain.
Mr. Secretary *Winwood.*
Mr. Secretary *Lake.*
Mr. Chancellor of the Exchequer.
Maſter of the Rolls.

HIS Majeſty having this day given order for meeting of the council, and that all the judges (being twelve in number) ſhould be ſent for to be preſent; when the lords were ſat, and the judges ready attending, his Majeſty came himſelf in perſon to council, and opened to them the cauſe of that aſſembly; which was, that he had called them together concerning a queſtion that had relation to no private perſon, but concerned God and the King, the power of his crown, and the ſtate of this church, whereof he was protector; and that there was no fitter place to handle it, than at the head of his council-table: that there had been a queſtion pleaded and argued concerning *Commendams*; the proceedings wherein had either been miſreported or miſhandled; for his Majeſty a year ſince had receiv'd advertiſements concerning the cauſe in two entrances, by ſome that intrenched into his prerogative royal, in the general power of granting *Commendams*; and by others, that the doubt reſted only upon a ſpecial nature of a *Commendam*, ſuch as in reſpect of the incongruity and exorbitant form thereof, might be queſtioned without impeaching or weakening the general power of all.

WHEREUPON his Majeſty willing to know the true ſtate thereof, commanded the Lord * Biſhop of *Wincheſter*, and Mr. Secretary *Winwood* to be

* *D. Bilſon*, who died *June* 18. 1616.

† This is the act of council referred to in the preceding letter, and drawn up by Sir *Fr. Bacon*; which, being written in a fair manner, I accidentally bought, and have corrected. If any errors remain, as I believe the reader will think there doth; it is becauſe I had no opportunity to peruſe the council-books. *Stephens.*

preſent

preſent at the next argument, and to report the ſtate of the queſtion and proceeding to his Majeſty. But Mr. Secretary *Winwood* being abſent by occaſion, the Lord of *Wincheſter* only was preſent, and made information to his Majeſty of the particulars thereof, which his Majeſty commanded him to report to the board. Whereupon the Lord of *Wincheſter* ſtood up and ſaid, that Serjeant *Chiborne*, who argued the cauſe againſt the *Commendams*, had maintained divers poſitions and aſſertions very prejudicial to his Majeſty's prerogative royal; as firſt, that the tranſlation of biſhops was againſt the canon law; and for authority vouched the canons of the council of *Sardis*; that the King had not power to grant *Commendams*, but in caſe of neceſſity; that there could be no neceſſity, becauſe there could be no need, for augmentation of living: for no man was bound to keep hoſpitality above his means; beſides many other parts of his argument tending to the overthrow of his Majeſty's prerogative in caſe of *Commendams*.

THE Lord of *Wincheſter* having made his report, his Majeſty reſumed his former narrative, letting the lords know, that after the Lord of *Winton* had made unto his Majeſty a report of that which paſſed at the argument of the cauſe, like in ſubſtance unto that which now had been made; his Majeſty apprehending the matter to be of ſo high a nature, commanded his attorney-general to ſignify his Majeſty's pleaſure unto the Lord Chief Juſtice; that in regard of his Majeſty's moſt weighty occaſions, and for that his Majeſty held it neceſſary upon the Lord of *Winton*'s report, that his Majeſty be firſt conſulted with, before the judges proceed to argue it; therefore the day appointed for the judges argument, ſhould be put off till they might ſpeak with his Majeſty, and this letter of his Majeſty's Attorney was, by his Majeſty's commandment, openly read as followeth, *in haec verba*.

MY LORD,

" IT is the King's expreſs pleaſure, that becauſe his Majeſty's time would
" not ſerve to have conference with your lordſhip and his judges, touch-
" ing the cauſe of *Commendams*, at his laſt being in town; in regard of his
" Majeſty's other moſt weighty occaſions; and for that his Majeſty holdeth
" it neceſſary, upon the report which my Lord of *Wincheſter*, (who was pre-
" ſent at the laſt arguments by his Majeſty's royal commandment) made to
" his Majeſty, that his Majeſty be firſt conſulted with, ere there be any far-
" ther proceedings by arguments by any of the judges, or otherwiſe; there-
" fore that the day appointed for the farther proceedings by arguments of
" the judges in that caſe, be put off till his Majeſty's farther pleaſure be known,
" upon conſulting with him. And to that end that your lordſhip forthwith
" ſignify his commandment to the reſt of the judges, whereof your lord-
" ſhip may not fail: and ſo I leave your lordſhip to God's goodneſs.

This *Thurſday* afternoon,
April 25, 1616.

Your loving friend to command,
FR. BACON.

THAT upon this letter received, the Lord Chief Juſtice returned word to his Majeſty's ſaid attorney by his ſervant; that it was fit the reſt of his brethren ſhould underſtand his Majeſty's pleaſure immediately by letters from his ſaid attorney to the judges of the ſeveral benches, and accordingly it was done; whereupon all the ſaid judges aſſembled, and by their letter under their hands certified his Majeſty, that they held thoſe letters, importing the ſignification aforeſaid to be contrary to law, and ſuch as they could not yield to the ſame

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by their oath; and that thereupon they had proceeded at the day, and did now certify his Majesty thereof; which letter of the judges his Majesty also commanded to be openly read, the tenor whereof followeth, *in hæc verba*.

Most dread and most gracious Sovereign;

" IT may please your most excellent Majesty to be advertised, that this letter here inclosed was delivered unto me your Chief Justice on *Thursday* " last in the afternoon, by a servant of your Majesty's Attorney-General; and " letters of like effect were on the day following sent from him by his servant " to us your Majesty's justices of every of the courts at *Westminster*. We are and " ever will be ready with all faithful and true hearts, according to our bounden " duties, to serve and obey your Majesty, and think our selves most happy to " spend our times and abilities to do your Majesty true and faithful service " in this present case mentioned in this letter. What information hath been " made unto you, whereupon Mr. Attorney doth ground his letter from the " report of the Bishop of *Winton*, we know not; this we know, that the true " substance of the cause summarily is thus; it consisteth principally upon the " construction of two acts of parliament, the one of the twenty fifth year of K. " *Edw.* III. and the other of the twenty fifth year of K. *Hen.* VIII. whereof " your Majesty's judges upon their oaths, and according to their best knowledge and learning, are bound to deliver their true understanding faithfully and uprightly; and the case between two for private interest and inheritance earnestly called on for justice and expedition. We hold it our duty " to inform your Majesty, that our oath is in these express words, that in case " any letters come unto us contrary to law, that we do nothing by such letters but certify your Majesty thereof, and go forth to do the law, notwithstanding the same letters: we have advisedly considered of the said letter " of Mr. Attorney, and with one consent do hold the same to be contrary to " law, and such as we could not yield to the same by our oath, assuredly " persuading our selves that your Majesty being truly informed, that it standeth not with your royal and just pleasure to give way to them: And knowing your Majesty's zeal to justice to be most renowned, therefore we have " according to our oaths and duties, at the very day prefixed the last term, " proceeded, and thereof certified your Majesty; and shall ever pray to the " Almighty for your Majesty in all honour, health and happiness long to reign " over us.

Serjeant's Inn, 25 Ap. 1616.

Edw. Coke. Henry Hobart, Laur. Tanfield, Pet. Warburton, George Snigge, Ja. Altham, Ed. Bromley, John Croke, Humphry Winche, John Dodderidge, Augustine Nicolls, Robert Houghton.

His Majesty having considered of this letter, by his princely letters returned answer, reporting himself to their own knowledge and experience what princely care he hath ever had since his coming to the crown, to have justice duly administer'd to his subjects, with all possible expedition; and how far he was from crossing or delaying of justice, when the interest of any private person was questioned: But on the other side expressing himself, that where the case concerned the high powers and prerogatives of his crown, he would not endure to have them wounded through the sides of a private person; admonishing them also, lastly, of a custom lately entertained, of a greater boldness to dispute the high points of his Majesty's prerogative in a popular

and unlawful liberty of argument more than in former times: And making them perceive alſo how weak and impertinent the pretence of allegation of their oath was in a caſe of this nature, and how well it might have been ſpared; with many other weighty points in the ſaid letter contained: Which letter alſo by his Majeſty's appointment and commandment was publickly read *in haec verba*.

James Rex.

" TRUSTY and well-beloved counſellors, and truſty and well-beloved, we greet you well. We perceive by your letter, that you conceive the commandment given you by our Attorney-General in our name to have proceeded upon wrong information: But if you liſt to remember what princely care we have ever had ſince our coming to this crown, to ſee juſtice duly adminiſter'd to our ſubjects, with all poſſible expedition; and how far we have ever been from urging the delay thereof in any ſort, you may ſafely perſuade yourſelves that it was no ſmall reaſon that moved us to ſend you that direction: You might very well have ſpared your labour in informing us of the nature of your oath; for altho' we never ſtudied the common law of *England*, yet are we not ignorant of any points which belong to a King to know: We are therefore to inform you hereby, that we are far from croſſing or delaying any thing which may belong to the intereſt of any private party in this caſe; but we cannot be contented to ſuffer the prerogative royal of our crown to be wounded through the ſides of a private perſon: We have no care at all which of the parties ſhall win his proceſs in this caſe, ſo that right prevail, and that juſtice be truly adminiſter'd. But on the other ſide, we have reaſon to foreſee that nothing be done in this caſe which may wound our prerogative in general; and therefore ſo that we may be ſure that nothing ſhall be debated amongſt you which may concern our general power of giving *Commendams*, we deſire not the parties to have one hour's delay of juſtice; but that our prerogative ſhould not be wounded in that regard for all times hereafter upon pretext of private perſons intereſt, we ſent you that direction; which we account as well to be wounded if it be publickly diſputed upon, as if any ſentence were given againſt it: We are therefore to admoniſh you, that ſince the prerogative of our crown hath been more boldly dealt withal in *Weſtminſter-hall*, during the time of our reign, than ever it was before in the reigns of divers princes immediately preceding us, that we will no longer endure that popular and unlawful liberty; and therefore we were juſtly moved to ſend you that direction to forbear to meddle in a cauſe of ſo tender a nature, till we had farther thought upon it. We have cauſe indeed to rejoice of your zeal for your ſpeedy execution of juſtice; but we would be glad that all our ſubjects might ſo find the fruits thereof, as that no pleas before you were of older date than this is. But as to your argument, which you found upon your oath, you give our predeceſſors, who firſt founded the oath, a very charitable meaning, in perverting their intention and zeal to juſtice, to make a weapon of it to uſe againſt their ſucceſſors: For although your oath be, that you ſhall not delay juſtice between any private perſons or parties, yet was it not meant that the King ſhould thereby receive harm, before he be forewarned thereof; neither can you deny, but that every term you will out of your own diſcretions, for reaſons known unto you, put off either the hearing or determining of any ordinary cauſe betwixt private perſons till the next term following.

" following. Our pleaſure therefore is, who are the head and fountain of " juſtice under God in our dominions, and we out of our abſolute power " and authority royal do command you, that you forbear to meddle any far- " ther in this plea till our coming to town, and that out of our own mouth " you hear our pleaſure in this buſineſs; which we do out of the care we " have, that our prerogative may not receive an unwitting and indirect blow; " and not to hinder juſtice to be adminiſter'd to any private parties, which " no importunities ſhall perſuade us to move you in. Like as, only for the " avoiding of the unreaſonable importunity of ſuitors in their own particular, " that oath was by our predeceſſors ordained to be miniſter'd unto you: ſo " we wiſh you heartily well to fare.

Poſtſcript. You ſhall upon the receipt of this letter call our Attorney-General unto you, who will inform you of the particular points which we are unwilling to be diſputed of in this caſe.

THIS letter being read, his Majeſty reſolved to take into his conſideration the parts of the judges letter and other their proceedings in that cauſe, and the errors therein contained and committed; which errors his Majeſty did ſet forth to be both in matter and manner: In matter, as well by way of omiſſion as commiſſion; for omiſſion, that it was a fault in the judges, that when they heard a counſellor at the bar preſume to argue againſt his Majeſty's prerogative, which in this caſe was in effect his ſupremacy, they did not interrupt and reprove ſharply that baſe and bold courſe of defaming or impeaching things of ſo high a nature by diſcourſe; eſpecially ſince his Majeſty hath obſerved, that ever ſince his coming to the crown, the popular ſort of lawyers have been the men, that moſt affrontedly in all parliaments have trodden upon his prerogative; which being moſt contrary to their vocation of any men, ſince the law or lawyers can never be reſpected, if the King be not reverenced. It doth therefore beſt become the judges of any, to check and bridle ſuch impudent lawyers, and in their ſeveral benches to diſgrace them that bear ſo little reſpect to their King's authority and prerogative: That his Majeſty had a double prerogative, whereof the one was ordinary and had relation to his private intereſt, which might be, and was every day, diſputed in *Weſtminſter-hall*; the other was of an higher nature, referring to his ſupreme and imperial power and ſovereignty, which ought not to be diſputed or handled in vulgar argument: But that of late the courts of the common law are grown ſo vaſt and tranſcendent, as they did both meddle with the King's prerogative, and had incroached upon all other courts of juſtice; as the high commiſſion, the councils eſtabliſhed in *Wales* and at *York*, the court of requeſts.

CONCERNING that which might be termed commiſſion, his Majeſty took exception at the judges letter both in matter and form: For matter, his Majeſty plainly demonſtrated, that whereas it was contained in the judges letter, that the ſignification of his Majeſty's letter as aforeſaid was contrary to law; and not agreeable to the oath of a judge, that could not be: Firſt, for that the putting off any hearing or proceeding upon any juſt or neceſſary cauſe, is no denying or delaying of juſtice, but wiſdom and maturity of proceeding; and that there cannot be a more juſt and neceſſary cauſe of ſtay, than the conſulting with the King, where the cauſe concerns the crown; and that the judges did daily put off cauſes upon lighter occaſions; and likewiſe his Majeſty did deſire to know of the judges, how his calling them to conſult with him was contrary to law, which they could never anſwer unto.

SECONDLY,

SECONDLY, That it was no bare ſuppoſition or ſurmiſe, that this cauſe concerned the King's prerogative; for that it had been directly and plainly diſputed at the bar; and the very diſputing thereof in a publick audience, is both dangerous and diſhonourable to his Majeſty.

THIRDLY, That the manner of the putting off that which the King required, was not infinite nor long time, but grounded upon his Majeſty's weighty occaſions, which were notorious; by reaſon whereof he could not ſpeak with the judges before the argument; and that there was a certain expectation of his Majeſty's return at *Whitſuntide:* And likewiſe that the cauſe had been ſo lately handled and argued, and would not receive judgment by the *Eaſter* term next, as the judges themſelves afterwards confeſſed.

AND afterwards, becauſe there was another juſt cauſe of abſence for the two Chief Juſtices, for that they ought to have aſſiſted the Lord Chancellor the ſame day in a great cauſe of the King's, followed by the Lord *Hunſdon* againſt the Lord *William Howard* in chancery; which cauſe of the King's, eſpecially being ſo worthy, ought to have had precedency before any cauſe betwixt party and party. Alſo where it was contained in the judges letter that the cauſe of *Commendams* was but a cauſe of private intereſt between party and party, his Majeſty ſhewed plainly the contrary; not only by the argument of Serjeant *Chiborne*, which was before his commandment, but by the argument of the judges themſelves, namely Juſtice *Nicolls* which was after; but eſpecially ſince one of the parties is a biſhop who pleaded for the *Commendams* by the virtue of his Majeſty's prerogative.

ALSO whereas it was contained in the judges letter, that the parties called upon them earneſtly for juſtice, his Majeſty conceived it to be but pretence; urging them to prove that there was any ſollicitation by the parties for expedition, otherwiſe than in an ordinary courſe of attendance; which they could could not prove.

As for the form of the letter, his Majeſty noted, that it was a new thing, and very indecent and unfit for ſubjects to diſobey the King's commandment, but moſt of all to proceed in the mean time, and to return to him a bare certificate; whereas they ought to have concluded with the laying down and repreſenting of their reaſons modeſtly to his Majeſty, why they ſhould proceed; and ſo to have ſubmitted the ſame to his princely judgment, expecting to hear from him whether they had given him ſatisfaction.

AFTER this his Majeſty's declaration, all the judges fell down upon their knees, and acknowledged their error for matter and form, humbly craving his Majeſty's gracious favour and pardon for the ſame.

BUT for the matter of the letter, the Lord Chief Juſtice of the King's-bench enter'd into a defence thereof; the effect whereof was, that the ſtay required by his Majeſty was a delay of juſtice, and therefore contrary to law and the judge's oath; and that the judges knew well amongſt themſelves, that the caſe (as they meant to handle it) did not concern his Majeſty's prerogative of granting of *Commendams:* And that if the day had not held by the not coming of the judges, the ſuit had been diſcontinued, which had been a failing of juſtice, and that they could not adjourn it, becauſe Mr. Attorney's letter mentioned no day certain, and that an adjournment muſt always be to a day certain.

UNTO which anſwer of the Chief Juſtice, his Majeſty did reply; that for the laſt conceit it was mere ſophiſtry, for that they might in their diſcretions have prefixed a convenient day, ſuch as there might have been time for them to

conſult with his Majeſty before, and that his Majeſty left that point of form to themſelves.

And for that other point, that they ſhould take upon them peremptorily to diſcern whether the plea concerned the King's prerogative, without conſulting with his Majeſty firſt, and informing his princely judgment, was a thing prepoſterous; for that they ought firſt to have made that appear to his Majeſty, and ſo to have given him aſſurance thereof upon conſulting with him.

And for the matter, that it ſhould be againſt the law and againſt their oath, his Majeſty ſaid he had ſpoken enough before; unto which the Lord Chief Juſtice in effect had made no anſwer, but only inſiſted upon the former opinion; and therefore the King required the Lord Chancellor to deliver his opinion upon that point, whether the ſtay that had been required by his Majeſty were contrary to law, or againſt the judges oath.

The Chancellor ſtood up and moved his Majeſty, that becauſe this queſtion had relation to matter of law, his Majeſty would be informed by his learned counſel firſt, and they firſt to deliver their opinions, which his Majeſty commanded them to do.

Whereupon his Majeſty's Attorney-General gave his opinion, that the putting off of the day in manner as was required by his Majeſty, to his underſtanding was without all ſcruple no delay of juſtice, nor danger of the judges oath; inſiſting upon ſome of the reaſons which his Majeſty had formerly opened, and adding that the letter he had formerly written by his Majeſty's command, was no imperious letter; as to ſay his Majeſty for certain cauſes, or for cauſes known to himſelf, would have them put off the day, but fairly and plainly expreſſed the cauſes unto them; for that the King conceived upon my Lord of *Winton*'s report, that the cauſe concerned him; and that his Majeſty would have willingly ſpoken with them before, but by reaſon of his important buſineſs could not; and therefore required a ſtay till they might conveniently ſpeak with him, which they knew could not be long. And in concluſion of his ſpeech wiſhed the judges to conſider ſeriouſly with themſelves, whether they were not in greater danger of breach of their oaths by the proceedings than they would have been by their ſtay; for that it is part of their oath to counſel his Majeſty when they are called; and if they will proceed firſt in a buſineſs whereupon they are called to counſel, and will counſel him when the matter is paſt, it is more than a ſimple refuſal to give him counſel; and ſo concluded his ſpeech, and the reſt of the learned counſel conſented to his opinion.

Whereupon the Lord Chief Juſtice of the King's bench anſwering nothing to the matter, took exception that the King's counſel learned ſhould plead or diſpute with the Judges; for he ſaid they were to plead before Judges, and not to diſpute with them. Whereunto the King's Attorney replied, that he found that exception ſtrange; for that the King's learned counſel were by oath and office, and much more when they had the King's expreſs commandment, without fear of any man's face, to proceed or declare againſt any the greateſt peer or ſubject of the kingdom; and not only any ſubject in particular, but any body of ſubjects or perſons, were they judges, or were they of an upper and lower houſe of parliament, in caſe they exceed the limits of their authority, or took any thing from his Majeſty's royal power or prerogative; and ſo concluded, that this challenge, and that in his Majeſty's preſence, was a wrong to their places, for which he and his fellows did appeal to his Majeſty for reparation. And thereupon his Majeſty did

aſſirm, that it was their duty ſo to do, and that he would maintain them therein, and took occaſion afterward again to ſpeak of it; for when the Lord Chief Juſtice ſaid he would not diſpute with his Majeſty, the King replied, that the Judges would not diſpute with him, nor his learned counſel might not diſpute with them; ſo whether they did well or ill, it muſt not be diſputed.

After this the Lord Chancellor declared his mind plainly and clearly, that the ſtay that had been by his Majeſty required, was not againſt the law, nor a breach of the judges oath, and required that the judges oath itſelf might be read out of the ſtatute, which was done by the King's Sollicitor, and all the words thereof weighed and conſidered.

Thereupon his Majeſty and the lords thought good to aſk the judges ſeverally their opinions; the queſtion being put in this manner: Whether if at any time, in a caſe depending before the judges his Majeſty conceived it to concern him either in power or profit, and thereupon required to conſult with them, and that they ſhould ſtay proceedings in the mean time, they ought not to ſtay accordingly? They all (the Lord Chief Juſtice only excepted) yielded that they would, and acknowledged it to be their duties ſo to do; only the Lord Chief Juſtice of the King's-bench ſaid for anſwer, that when the caſe ſhould be, he would do that which ſhould be fit for a judge to do. And the Lord Chief Juſtice of the Common-pleas, who had aſſented with the reſt, added, that he would ever truſt the juſtice of his Majeſty's commandment. After this was put to a point, his Majeſty thought fit, in reſpect of the farther day of argument, appointed the Saturday following for the *Commendams*, to know from his judges what he might expect from them concerning the ſame. Whereupon the Lord of *Canterbury* breaking the caſe into ſome queſtions, his Majeſty did require his judges to deal plainly with him, whether they meant in their argument to touch the general power of granting *Commendams*, yea or no? Whereupon all the ſaid judges did promiſe and aſſure his Majeſty, that in the argument of the ſaid caſe of *Commendams*, they would ſpeak nothing which ſhould weaken or draw into doubt his Majeſty's prerogative for granting of them; but intended particularly to inſiſt upon the points of *lapſe* and other judicial points of this caſe, which they conceived to be of a form differing from all other *Commendams* which have been practiſed.

The judges alſo went farther, and did promiſe his Majeſty, that they would not only abſtain from ſpeaking any thing to weaken his Majeſty's prerogative of *Commendams*, but would directly and in plain terms affirm the ſame, and correct the erroneous and bold ſpeeches which had been uſed at the bar in derogation thereof.

Also the judges did in general acknowledge and profeſs with great forwardneſs, that it was their duty, if any counſellor at the law preſumed at any time to call in queſtion his Majeſty's high prerogative, that they ought to reprehend them and ſilence them, and all promiſed ſo to do hereafter.

Lastly, the two judges that were then next to argue, Mr. Juſtice *Dodderidge*, and Mr. Juſtice *Winch* opened themſelves unto his Majeſty thus far; that they would inſiſt chiefly upon the *lapſe*, and ſome points of uncertainty, repugnancy, and abſurdity, being peculiar to this *Commendam*; and that they would ſhew their diſlike of that which had been ſaid at the bar, for the weakening of the general power; and Mr. Juſtice *Dodderidge* ſaid he would conclude for the King, that the church was void and in his Majeſty's gift; he alſo ſaid that the King might give a *Commendam* to a biſhop either before

or

or after his conſecration, and that he might give it him during his life, or for a certain number of years.

THE judges having thus far ſubmitted and declared themſelves, his Majeſty commanded them to keep the bounds and limits of their ſeveral courts, not to ſuffer his prerogative to be wounded by raſh and unadviſed pleading before them, or by new invention of law: for as he well knew the true and ancient common law is the moſt favourable for Kings of any law in the world; ſo he adviſed them to apply their ſtudies to that ancient and beſt law, and not to extend the power of any other of their courts beyond their due limits; following the precedents of the beſt ancient judges in the times of the beſt government; and that then they might aſſure themſelves that he for his part in his protection of them, and expediting of juſtice, would walk in the ſteps of ancient and beſt Kings. Whereupon he gave them leave to proceed in their argument.

WHEN the judges were removed, his Majeſty that had forborn to aſk the voices and opinions of his council before the judges, becauſe he would not prejudicate the freedom of the judges opinion, concerning whether the ſtay of proceedings that had been by his Majeſty required, could by any conſtruction be thought to be within the compaſs of the judges oath (which they had heard read unto them) did then put the queſtion to his council; who all with one conſent did give opinion, that it was far from any colour or ſhadow of ſuch interpretation, and that it was againſt common ſenſe to think the contrary, eſpecially ſince there is no mention made in their oath of delay of juſtice, but only that they ſhould not deny juſtice, nor be moved by any of the King's letters, to do any thing contrary to law or juſtice.

G. Cant. Tho. Elleſmere, Canc. *Th. Suffolk, E. Worceſter, Pembroke, Nottingham, Lenox, W. Knollys, John Digby, Ralph Winwood, Tho. Lake, Fulke Greville, Jul. Caeſar, Fra. Bacon.*

CXLVI. To Sir GEORGE VILLIERS.

SIR,

I Do think you may do your ſelf honour, and that which is more, do a good work; if you will aſſiſt and perfect a motion begun, (and that upon a good ground, both of ſubmiſſion and conformity,) for the reſtoring of Doctor *Burgeſs* to preach *; and I wiſh likewiſe, that if *Grays-Inn* ſhould think good (after he is free from the ſtate,) to chooſe him for their preacher, his Majeſty ſhould not be againſt it: for certainly we ſhould watch him well if he ſhould fly forth; ſo as he cannot be placed in a more ſafe auditory. This may ſeem a trifle, but I do aſſure you I do ſcarce know a particular, wherein you may open more honeſt mouths to ſpeak honour of you, than this. And I do extremely deſire there may be a full cry from all ſorts of people, (eſpecially the beſt,) to ſpeak, and to trumpet out your commendations. I pray you take it to heart, and do ſomewhat in it. I reſt,

Your devoted and bounden ſervant,

FR. BACON.

June 12. 1616.

* Soon after this date Doctor *Burgeſs* was preſented to the parſonage of *Sutton-Colfield* in *Warwickſhire*. In 1620 he attended Sir *Horace Vere* into the *Palatinate*, when that noble general conducted thither a gallant regiment, the largeſt for number, and greateſt for quality, (being much compoſed of gentlemen) that had been ſeen. *Stephens.*

CXLVII.

CXLVII. To Sir GEORGE VILLIERS.

SIR,

THERE is a particular wherein I think you may do your ſelf honour, which as I am informed hath been laboured by my Lady of *Bedford* ‖, and put in good way by the Biſhop of *Bath* and *Wells* †, concerning thereſtoring to preach of a famous preacher, one Doctor *Burgeſs*; who, though he hath been ſilenced a great time, yet he hath now made ſuch a ſubmiſſion touching his conformity, as giveth ſatisfaction. It is much deſired alſo by *Grays-Inn* (if he ſhall be free from the ſtate,) to chuſe him for their preacher: and certainly it is ſafer to place him there, than in another auditory, becauſe he will be well watched, if he ſhould any ways fly forth in his ſermons beyond duty. This may ſeem a trifle, but I do aſſure you, in opening this man's mouth to preach, you ſhall open very many mouths to ſpeak honour of you; and I confeſs I would have a full cry of puritans, of papiſts, of all the world to ſpeak well of you; and beſides I am perſuaded, (which is above all earthly glory) you ſhall do God good ſervice in it. I pray deal with his Majeſty in it. I reſt,

Your devoted and bounden ſervant,

June 13. 1616. FR. BACON.

‖ My Lady of *Bedford*, ſo much celebrated by Doctor *Donne*, and Sir *William Temple*, for the admirable diſpoſition of her garden at *Moor-Park*, was ſiſter and co-heir to the laſt Lord *Harrington* of *Exton*; who dying in the entrance of the year 1614, and the 22d of his age, revived in the nation the ſenſe it had of the loſs of Prince *Henry*, as being a young nobleman of great hope and piety. This lady diſpoſed of much of the eſtate ſhe had from her brother; ſelling *Burley* upon the hill in the county of *Rutland*, to the then Marquis of *Buckingham*, where he afterwards adorned the ſeat with noble ſtructures, which were deſtroy'd in the time of our civil wars. But this place has now recover'd its ancient ſplendour at the expence, and by the direction of its preſent Lord the Earl of *Nottingham*. *Stephens.*

† This biſhop was fifth ſon to Sir *Edward Montague*, and brother to *Edward* the firſt Lord *Montague* of *Boughton*, a prelate of great learning and eloquence, and very munificent; and by ſome called King *James*'s eccleſiaſtical favourite. In 1616 he was tranſlated to *Wincheſter*, and dying in two years time, he was buried in the body of the Abbey-Church of *Bath*, which with great coſt and care he had preſerved from the ruins, which time and neglect were bringing upon it. *Stephens.*

From the Original.

CXLVIII. To Sir GEORGE VILLIERS.*

SIR,

I SEND you incloſed a warrant for my Lady of *Somerſet*'s pardon, reformed in that main and material point, of inſerting a clauſe [that ſhe was not a principal, but an acceſſary before the fact, by the inſtigation of baſe perſons.] Her friends think long to have it diſpatched, which I marvel not at, for that in matter of life, moments are numbred ‡.

I do more and more take contentment in his Majeſty's choice of Sir *Oliver St. John*, for his Deputy of *Ireland*, finding, upon divers conferences with him, his great ſufficiency; and I hope the good intelligence which he purpoſeth to hold with me, by advertiſements from time to time, ſhall work a good effect for his Majeſty's ſervice.

‡ Of the trial and conviction of the Counteſs of *Somerſet*, for being acceſſary to the murder of Sir *Thomas Overbury*, an account may be ſeen in the Introduction to Sir *Francis Bacon*'s letters and memoirs; but the Lord High Steward, and the Peers, obſerving that there had been ſatisfaction made to juſtice, that ſhe had been ſeduced by baſe perſons, and that ſhe had freely confeſſed her crime, interceded with the King for her pardon.

I am wonderful deſirous to ſee that kingdom flouriſh, becauſe it is the proper work and glory of his Majeſty and his times. And his Majeſty may be pleaſed to call to mind, that a good while ſince, when the great rent and diviſions were in the parliament of *Ireland*, I was no unfortunate remembrancer to his Majeſty's princely wiſdom in that buſineſs. God ever keep you and proſper you.

Your true and moſt devoted and bounden Servant,

1 July 1616. FR. BACON.

From the Original.

CXLIX. To Sir GEORGE VILLIERS.*

SIR,

I THINK I cannot do better ſervice towards the good eſtate of the kingdom of *Ireland*, than to procure the King to be well ſerved in the eminent places of law and juſtice: I ſhall therefore name unto you for the Attorney's place there, or for the Solicitor's place, if the new Solicitor ſhall go up, a Gentleman of mine own breeding and framing, Mr. *Edward Wyrthington* of *Grays-Inn*; he is born to eight hundred pounds a year; he is the eldeſt ſon of a moſt ſevere juſticer, amongſt the recuſants of *Lancaſhire*, and a man moſt able for law and ſpeech, and by me trained in the King's cauſes. My Lord Deputy, by my deſcription, is much in love with the man. I hear my Lord of *Canterbury*, and Sir *Thomas Laque*, ſhould name one Sir *John Beare*, and ſome other mean men. This man I commend upon my credit, for the good of his Majeſty's ſervice. God ever preſerve and proſper you. I reſt,

Your moſt devoted, and moſt bounden ſervant,

2 July 1616. FR. BACON.

CL. To Sir GEORGE VILLIERS, about *Iriſh* affairs.

SIR,

BECAUSE I am uncertain whether his Majeſty will put to a point ſome reſolutions touching *Ireland*, now at *Windſor*; I thought it my duty to attend his Majeſty by my letter, (and thereby to ſupply my abſence) for the renewing of ſome former commiſſions for *Ireland*, and the framing of a new commiſſion for the wards and the alienations, which appertain properly to me as his Majeſty's Attorney, and have been accordingly referred by the lords. I will undertake that they are prepared with a greater care, and better application to his Majeſty's ſervice in that kingdom, than heretofore they have been; and therefore of that I ſay no more. And for the inſtructions of the new deputy, they have been ſet down by the two ſecretaries, and read to the board; and being things of an ordinary nature, I do not ſee but they may paſs.

BUT there have been three propoſitions and counſels which have been ſtirred, which ſeem to me of very great importance; wherein I think my ſelf bound to deliver to his Majeſty my advice and opinion, if they ſhould now come in queſtion.

THE firſt is, touching the recuſant magiſtrates of the towns of *Ireland*, and the commonalties themſelves their electors, what ſhall be done? Which

conſultation ariſeth from the late advertiſements of the two Lords Juſtices, upon the inſtance of the two towns, *Limerick* and *Kilkenny*; in which advertiſements they repreſent the danger only, without giving any light for the remedy; rather warily for themſelves, than agreeably to their duties and places.

In this point I humbly pray his Majeſty to remember, that the refuſal is not of the oath of allegiance, (which is not enacted in *Ireland*;) but of the oath of ſupremacy, which cutteth deeper into matter of conſcience. Alſo, that his Majeſty will, out of the depth of his excellent wiſdom and providence, think, and, as it were, calculate with himſelf, whether time will make more for the cauſe of religion in *Ireland*, and be ſtill more and more propitious; or whether deferring remedies will not make the caſe more difficult. For if time give his Majeſty advantage, what needeth precipitation to extreme remedies? But if time will make the caſe more deſperate, then his Majeſty cannot begin too ſoon. Now, in my opinion, time will open and facilitate things for reformation of religion there, and not ſhut up or lock out the ſame. For firſt, the plantations going on, and being principally of proteſtants, cannot but mate the other party in time; alſo his Majeſty's care in placing good biſhops and divines, in amplifying the college there, and in looking to the education of wards and the like; as they are the moſt natural means, ſo are they like to be the moſt effectual and happy for the weeding out of popery, without uſing the temporal ſword: ſo that, I think, I may truly conclude, that the ripeneſs of time is not yet come.

Therefore my advice in all humbleneſs is, that this hazardous courſe of proceeding, to tender the oath to the magiſtrates of towns, proceed not, but die by degrees. And yet, to preſerve the authority and reputation of the former council, I would have ſomewhat done; which is, that there be a proceeding to ſeizure of liberties; but not by any act of power, but by *Quo warranto*, or *Scire facias*; which is a legal courſe; and will be the work of three or four terms; by which time the matter will ſomewhat cool.

But I would not (in any caſe) that the proceeding ſhould be with both the towns, which ſtand now in contempt, but with one of them only, chooſing that which ſhall be thought moſt fit. For if his Majeſty proceed with both, then all the towns that are in the like caſe will think it a common cauſe; and that it is but their caſe to-day, and their own to-morrow. But if his Majeſty proceed with one, the apprehenſion and terror will not be ſo ſtrong; for they will think it may be their caſe as well to be ſpared as proſecuted: and this is the beſt advice that I can give to his Majeſty in this ſtrait; and of this opinion ſeemed my Lord Chancellor to be.

The ſecond propoſition is this: it may be his Majeſty will be moved to reduce the number of his council of *Ireland*, which is now almoſt fifty, to twenty, or the like number; in reſpect the greatneſs of the number doth both embaſe the authority of the council, and divulge the buſineſs. Nevertheleſs, I do hold this propoſition to be rather ſpecious and ſolemn, than needful at this time; for certainly, it will fill the ſtate full of diſcontentment; which in a growing and unſettled eſtate ought not to be.

This I could wiſh; that his Majeſty would appoint a ſelect number of counſellors there, which might deal in the improvement of his revenue, (being a thing not fit to paſs through too many hands;) and that the ſaid ſelected number ſhould have days of ſitting by themſelves, at which the reſt of the council ſhould not be preſent; which being once ſettled, then other principal buſineſs

buſineſs of ſtate may be handled at thoſe ſittings, and ſo the reſt begin to be diſuſed, and yet retain their countenance without murmur or diſgrace.

THE third propoſition, as it is wound up, ſeemeth to be pretty, if it can keep promiſe; for it is thus, that a means may be found to re-inforce his Majeſty's army there by 500 or 1000 men; and that without any penny encreaſe of charge. And the means ſhould be, that there ſhould be a commandment of a local removing, and transferring ſome companies from one province to another; whereupon it is ſuppoſed, that many that are planted in houſe and lands, will rather loſe their entertainment than remove; and thereby new men may have their pay, and yet the old be mingled in the country for the ſtrength thereof.

IN this propoſition two things may be feared: the one, diſcontent of thoſe that ſhall be put off; the other, that the companies ſhall be ſtuffed with *Tirones*, inſtead of *Veterani*. I wiſh therefore that this propoſition be well debated ere it be admitted. Thus having performed that which duty binds me to do, I commend you to God's beſt preſervation.

Your moſt devoted and bounden ſervant,

Gorhambury, July 5. 1616. FR. BACON.

From the Original.

CLI. To the KING.*

It may pleaſe your moſt excellent Majeſty,

ACCORDING to your commandment, I ſend incloſed the preface to the patent of creation of Sir *George Villiers*. I have not uſed any glaring terms, but drawn it according to your Majeſty's inſtructions, and the note which thereupon I framed, and your Majeſty allowed, with ſome additions which I have inſerted. But I hope your Majeſty will be pleaſed to correct and perfect it. Your Majeſty will be alſo pleaſed to remember, that if the creation ſhall be at *Roughford*, your pleaſure and this draught be ſpeedily returned; for it will aſk a ſending of the bill for your Majeſty's ſignature, and a ſending back of the ſame to paſs the ſeals, and a ſending thereupon the patent itſelf: ſo it muſt be twice ſent up and down before the day. God evermore preſerve your Majeſty.

Your Majeſty's moſt devoted and moſt bounden ſervant,

28 July 1616. FR. BACON.

CLII. To Sir GEORGE VILLIERS, on ſending his bill for Viſcount.

SIR,

I SEND you the bill for his Majeſty's ſignature, reformed according to his Majeſty's amendments, both in the two places, (which, I aſſure you, were both altered with great judgment;) and in the third place, which his Majeſty termed a queſtion only. But he is an idle body that thinks his Majeſty aſks an idle queſtion; and therefore his Majeſty's queſtions are to be anſwered, by taking away the cauſe of the queſtion, and not by replying.

FOR

For the name, his Majeſty's will is a law in thoſe things; and to ſpeak truth, it is a well-ſounding and noble name, both here and abroad; and being your proper name, I will take it for a good ſign that you ſhall give honour to your dignity, and not your dignity to you. Therefore I have made it Viſcount *Villiers*: and for your barony, I will keep it for an earldom; for though the other had been more orderly, yet that is as uſual, and both alike good in law.

For *Roper*'s place *, I would have it by all means diſpatched: And therefore I marvel it lingereth. It were no good manners to take the buſineſs out of my Lord Treaſurer's hands; and therefore I purpoſe to write to his lordſhip, if I hear not from him firſt by Mr. *Deccomb*. But if I hear of any delay, you will give me leave (eſpecially ſince the King named me,) to deal with Sir *John Roper* my ſelf; for neither I, nor my Lord Treaſurer, can deſerve any great thanks of you in this buſineſs; conſidering the King hath ſpoken to Sir *John Roper*, and he hath promiſed; and beſides, the thing itſelf is ſo reaſonable, as it ought to be as ſoon done as ſaid. I am now gotten into the country to my houſe, where I have ſome little liberty to think of that I would think of, and not of that which other men hourly break my head withal, as it was at *London*. Upon this you may conclude, that moſt of my thoughts are of his Majeſty; and then you cannot be far off. God ever keep you, and proſper you. I reſt always

Your true and moſt devoted ſervant,

Aug. 5. 1616. Fr. Bacon.

* Sir *John Roper*, who had for many years enjoy'd the place of the *Chief Clerk for enrolling of pleas in the court of King's-bench*, eſteem'd to be worth about 4000 *l. per ann.* being grown old, was prevail'd with to ſurrender it upon being created Lord *Teynham*, with a reſervation of the profits thereof to himſelf during life. Upon which ſurrender Sir *George Villiers* was to have the office granted to two of his truſtees for their lives, as *Carr* Earl of *Somerſet* was to have had before. But the Lord Chief Juſtice *Coke* not being very forward to accept of the ſurrender, or make a new grant of it upon thoſe terms, he was upon the 3d of *October* 1616, commanded to deſiſt from the ſervice of his place, and at laſt removed from it upon the 15th of *November* following. His ſucceſſor Sir *Henry Montagu*, third ſon of Sir *Edward Montagu* of *Boughton* in *Northamptonſhire*, Recorder of *London*, and King's Serjeant, being more complaiſant, Sir *John Roper* reſign'd towards the latter end of the ſame month; and Mr. *Shute*, and Mr. *Heath*, who was afterwards the King's Sollicitor General, being the deputies and truſtees of Sir *Geo. Villiers*, were admitted. *Stephens*, Introduct. p. 37.

CLIII. To Sir George Villiers, on ſending his patent.

SIR,

I Have ſent you now your patent of creation of Lord *Blechley*, of *Blechley*, and of Viſcount *Villiers*. *Blechley* is your own; and I liked the ſound of the name better than *Whaddon*; but the name will be hid, for you will be called Viſcount *Villiers*. I have put them both in a patent, after the manner of the patent of arms where baronies are joined: But the chief reaſon was, becauſe I would avoid double prefaces, which had not been fit; nevertheleſs the ceremony of robing, and otherwiſe, muſt be double: and now, becauſe I am in the country, I will ſend you ſome of my country fruits, which with me are good meditations; which, when I am in the city, are choked with buſineſs.

After that the King ſhall have water'd your new dignities, with his bounty of the lands which he intends you; and that ſome other things concerning your means, which are now likewiſe in intention, ſhall be ſettled upon you; I do not ſee but you may think your private fortunes eſtabliſhed: And therefore it is now time, that you ſhould refer your actions chiefly to

the good of your ſovereign and your country. It is the life of an ox or a beaſt always to eat, and never to exerciſe; but men are born (eſpecially Chriſtian men) not to cram in their fortunes, but to exerciſe their virtues; and yet the other have been the unworthy, and ſometimes the unlucky humour of great perſons in our times; neither will your farther fortune be the farther off: For aſſure yourſelf, that fortune is of a woman's nature, that will ſooner follow you by ſlighting than by too much wooing. And in this dedication of yourſelf to the publick, I recommend unto you principally, that which I think was never done ſince I was born; and which not done, hath bred almoſt a wilderneſs and ſolitude in the King's ſervice; which is, that you countenance and encourage and advance able and virtuous men in all kinds, degrees and profeſſions. For in the time of ſome late great counſellors, when they bare the ſway, able men were by deſign and of purpoſe ſuppreſſed; and tho' now ſince choice goeth better both in church and commonwealth, yet money and turn-ſerving and cunning canvaſſes and importunity prevail too much. And in places of moment, rather make able and honeſt men yours, than advance thoſe that are otherwiſe becauſe they are yours. As for cunning and corrupt men, you muſt, I know, ſometimes uſe them, but keep them at a diſtance; and let it appear, that you make uſe of them, rather than that they lead you. Above all, depend wholly (next to God) upon the King; and be ruled (as hitherto you have been) by his inſtructions; for that's beſt for yourſelf. For the King's care and thoughts concerning you are according to the thoughts of a great King; whereas your thoughts concerning yourſelf are, and ought to be, according to the thoughts of a modeſt man. But let me not weary you: The ſum is, that you think goodneſs the beſt part of greatneſs; and that you remember whence your riſing comes, and make return accordingly. God ever keep you.

Your true and moſt devoted ſervant,

Aug. 12. 1616. FR. BACON.

The greateſt truſt between man and man, is the truſt of giving counſel, ſays Sir *Fr. Bacon* in his *Eſſay of Counſel*, Vol. III. p. 329. and N° CLV. of the following letters; which part ſurely no man could diſcharge with greater fidelity and ability than he did, in that excellent diſcourſe printed at the end of Vol. III. Therein Sir *Francis* doth deſcend into ſo particular a conſideration, how this great favourite ought to govern himſelf in relation to all degrees of men; of the good he might do, and the evils he might prevent; that whoſoever in his circumſtances ſhall obſerve and practiſe thoſe rules, muſt have very hard luck, if he doth not become gracious in the eyes of the people and of the prince. *Stephens.*

CLIV. To the KING, of Sir *George Villiers*'s patent.

It may pleaſe your moſt excellent Majeſty,

I HAVE ſent Sir *George Villiers*'s patent, drawn again, containing alſo a barony; the name *Blechley*, which is his own, and to my thinking ſoundeth better than *Whaddon*. I have included both in one patent to avoid a double preface, and as hath been uſed in the patents of Earls of like nature: nevertheleſs the ceremony of robing and otherwiſe is to be double, as is alſo uſed in like caſe of Earls.

IT reſteth, that I expreſs unto your Majeſty my great joy, in your honouring and advancing this gentleman; whom to deſcribe, not with colours, but with true lines, I may ſay this; your Majeſty certainly hath found out and choſen a ſafe nature, a capable man, an honeſt will, generous and noble affections, and a courage well lodged, and one that I know loveth your Majeſty unfeignedly, and admireth you as much as is in a man to admire

his

his Sovereign upon earth. Only your Majeſty's ſchool (wherein he hath already ſo well profited, as in this entrance upon the ſtage, being the time of greateſt danger, he hath not committed any manifeſt error;) will add perfection to your Majeſty's comfort and the great contentment of your people. God ever preſerve and proſper your Majeſty. I reſt in all humbleneſs,

Your Majeſty's moſt bounden and moſt devoted ſubject and ſervant,

Aug. 12. 1616. FR. BACON.

CLV. To Sir GEORGE VILLIERS, on ſending his patent ſealed.

SIR,

I TOOK much contentment in that I perceived by your letter, that you took in ſo good part the freedom of my advice, and that yourſelf in your own nature conſented therewith. Certainly no ſervice is comparable to good counſel; and the reaſon is, becauſe no man can do ſo much for another, as a man may do for himſelf: Now good counſel helpeth a man to help himſelf; but you have ſo happy a maſter as ſupplieth all. My ſervice and good will ſhall not be wanting.

IT was graciouſly and kindly done alſo of his Majeſty towards me, to tell you that you were beholden to me: But it muſt be then for thinking of you as I do; for otherwiſe, for ſpeaking as I think, it is but the part of an honeſt man. I ſend you your patent, whereof God give you joy; and I ſend you here incloſed a little note of remembrance for that part of the ceremony which concerneth the patent; for as for other ceremonies, I leave to others.

MY Lord Chancellor diſpatch'd your patent preſently upon the receipt; and writ to me, how glad he was of it, and how well he wiſh'd you. If you writ to him a few words of thanks, I think, you ſhall do well. God keep you and proſper you. I ever reſt

Your true and moſt devoted ſervant,

Aug. 20. 1616. FR. BACON.

CLVI. To Sir GEORGE VILLIERS, acknowledging the King's favour.

SIR,

I AM more and more bound unto his Majeſty, who, I think, knowing me to have other ends than ambition, is contented to make me judge of mine own deſires. I am now beating my brains (among many cares of his Majeſty's buſineſs) touching the redeeming the time in this buſineſs of cloth. The great queſtion is; how to miſs, or how to mate the *Flemings*; how to paſs by them, or how to paſs over them.

IN my next letter, I ſhall alter your ſtile: but I ſhall never whilſt I breathe alter mine own ſtile, in being

Your true and moſt devoted ſervant,

Aug. 22. 1616. FR. BACON.

CLVII.

CLVII. To the KING.

It may pleaſe your moſt excellent Majeſty,

FIRST, from the bottom of my heart I thank the God of all mercy and ſalvation, that he hath preſerved you from receiving any hurt by your fall; and I pray his divine Majeſty ever to preſerve you on horſeback and on foot from hurt and fear of hurt.

Now touching the clothing buſineſs; for that I perceive the cloth goeth not off as it ſhould, and that *Wiltſhire* is now come in with complaint as well as *Glouceſterſhire* and *Worceſterſhire*, ſo that this gangrene creepeth on; I humbly pray your Majeſty to take into your Majeſty's princely conſideration a remedy for the preſent ſtand, which certainly will do the deed; and for any thing that I know will be honourable and convenient, tho' joined with ſome loſs in your Majeſty's cuſtoms, which I know in a buſineſs of this quality, and being but for an interim till you may negotiate, your Majeſty doth not eſteem: And it is this.

THAT your Majeſty by your proclamation do forbid (after fourteen days, giving that time for ſuiting mens ſelves) the wearing of any ſtuff made wholly of ſilk, without mixture of wool, for the ſpace of ſix months. So your Majeſty ſhall ſupply outward vent with inward uſe, ſpecially for the finer cloths, which are thoſe wherein the ſtand principally is, and which ſilk-wearers are likeſt to buy; and you ſhall ſhew a moſt princely care over thouſands of the poor people; and beſides, your Majeſty ſhall blow a horn, to let the *Flemings* know your Majeſty will not give over the chace. Again, the winter ſeaſon coming on is fitteſt for wearing of cloth; and there is ſcope enough left for bravery and vanity by lacing and embroidery, ſo it be upon cloth or ſtuffs of wool.

I thought it my duty to offer and ſubmit this remedy, amongſt others, to your Majeſty's great wiſdom, becauſe it pleas'd you to lay the care of this buſineſs upon me; and indeed my care did fly to it before, as it ſhall always do to any knots and difficulties in your buſineſs, wherein hitherto I have been not unfortunate. God ever have you in his moſt precious cuſtody.

Your Majeſty's moſt faithful and moſt bounden ſervant,

Sept. 13. 1616. FR. BACON.

CLVIII. To the Lord Viſcount VILLIERS.

My very good Lord,

IT was my opinion from the beginning, that this company will never overcome the buſineſs of the cloth; and that the impediments are as much or more in the perſons which are *inſtrumenta animata*, than in the dead buſineſs itſelf.

I have therefore ſent unto the King here incloſed my reaſons, which I pray your lordſhip to ſhew his Majeſty.

THE new company and the old company are but the ſons of *Adam* to me, and I take myſelf to have ſome credit with both; but it is upon fear rather with the old, and upon love rather with the new; and yet with both upon perſuaſion that I underſtand the buſineſs.

NEVERTHELESS I walk *in via regia*, which is not abſolutely acceptable to either: For the new company would have all their demands granted, and

and the old company would have the King's work given over and deſerted.

My opinion is, that the old company be drawn to ſucceed into the contract, (elſe the King's honour ſuffereth,) and that we all draw in one way to effect that. If time, which is the wiſeſt of things, prove the work impoſſible or inconvenient, which I do not yet believe, I know his Majeſty and the ſtate will not ſuffer them to periſh.

I wiſh what ſhall be done were done with reſolution and ſpeed, and that your lordſhip (becauſe it is a gracious buſineſs) had thanks of it next the King; and that there were ſome commiſſion under his Majeſty's ſign manual to deal with ſome ſelected perſons of the old company, and to take their anſwers and conſent under their hands; and that the procuring the commiſſion, and the procuring of their offers to be accepted, were your lordſhip's work.

In this treaty my Lord Chancellor muſt by no means be left out; for he will moderate well, and aimeth at his Majeſty's ends.

Mr. Sollicitor is not yet returned, but I look for him preſently. I reſt,

Your Lordſhip's true and moſt devoted ſervant,

Monday, *October* 14. at 10 of the clock.

Fr. Bacon.

CLIX. Reaſons why the new company is not to be truſted and continued with the trade of cloths.

First, The company conſiſts of a number of young men and ſhop-keepers, which not being bred in the trade, are fearful to meddle with any of the dear and fine cloths, but only meddle with the coarſe cloths, which is every man's ſkill; and beſides having other trades to live upon, they come in the ſunſhine ſo long as things go well, and as ſoon as they meet with any ſtorm or cloud, they leave trade, and go back to ſhop-keeping: whereas the old company were beaten traders, and having no other means of living but that trade, were fain to ride out all accidents and difficulties, which, (being men of great ability) they were well able to do.

Secondly, Theſe young men being the major part, and having a kind of dependance upon Alderman *Cockain*, they carry things by plurality of voices; and yet thoſe few of the old company, which are amongſt them, do drive almoſt three parts of the trade: and it is impoſſible things ſhould go well, where one part gives the vote, and the other doth the work; ſo that the execution of all things lies chiefly upon them that never conſented, which is merely *motus violentus*, and cannot laſt.

Thirdly, The new company make continually ſuch new ſpringing demands, as the ſtate can never be ſecure nor truſt to them; neither doth it ſeem that they much truſt themſelves.

Fourthly, The preſent ſtand of cloth at *Blackwell-hall* (which is that that preſſeth the ſtate moſt, and is provided for but by a temporary and weak remedy,) is ſuppoſed would be preſently at an end, upon the revivor of the old; in reſpect that they are able men and united amongſt themſelves.

Fifthly, In theſe caſes *opinio eſt veritate major*, and the very voice and expectation of revivor of the old company will comfort the clothiers, and encourage them not to lay down their looms.

Sixthly, The very *Flemings* themſelves (in regard of the pique they have againſt the new company) are like to be more pliant and tractable towards his Majeſty's ends and deſires.

SEVENTHLY, Conſidering the buſineſs hath not gone on well, his Majeſty muſt either lay the fault upon the matter itſelf, or upon the perſons that have managed it; wherein the King ſhall beſt acquit his honour, to lay it where it is indeed; that is, upon the carriage and proceedings of the new company, which have been full of uncertainty and abuſe.

LASTLY, The ſubjects of this kingdom generally have an ill taſte and conceit of the new company, and therefore the putting of them down will diſcharge the ſtate of a great deal of envy.

CLX. To the Lord Viſcount VILLIERS.

My very good Lord,

NOW that the King hath received my opinion, with the judges opinion, unto whom it was referred, touching the propoſition for inns in point of law; it reſteth that it be moulded and carried in that ſort, as it may paſs with beſt contentment and conveniency. Wherein I that ever love good company, as I was joined with others in the legal point, ſo I deſire not to be alone in the direction touching the conveniency. And therefore I ſend your Lordſhip a form of warrant for the King's ſignature, whereby the framing of the buſineſs, and that which belongeth to it, may be referred to my ſelf with Serjeant *Montague* and Serjeant *Finch*; and tho' *Montague* ſhould change his place, that alteration hurteth not the buſineſs, but rather helpeth it. And becauſe the inquiry and ſurvey touching inns, will require much attendance and charge, and the making of the licences, I ſhall think fit (when that queſtion cometh to me) to be† to the juſtice of aſſiſe, and not to thoſe that follow this buſineſs: therefore his Majeſty may be pleaſed to conſider what proportion or dividend ſhall be allotted to Mr. *Mompeſſon*, and thoſe that ſhall follow it at their own charge, which uſeth in like caſes to be a fifth *. So I ever reſt,

† Here (referred) or ſome word of the like import is omitted.

Your Lordſhip's true and moſt devoted ſervant,

Nov. 13. 1616. FR. BACON.

* I ſuppoſe after the Judges and Attorney-General had given the opinion above-mentioned, that a patent was ſoon granted for licenſing of common inns; whence Sir *Giles Mompeſſon* levied ſeveral ſums by fines, and annual rent; and from ale-houſes alſo by a ſubſequent patent: Proceeding therein with ſo much rigour, that it was complained of in the parliament which began in 16$\frac{2}{1}^{0}$, as one of the great grievances of the nation; the patent declared illegal, and recalled by the King's proclamation; *Mompeſſon* and *Michel* the chief projectors of this and ſome other oppreſſions, ſeverely cenſured according to their demerits: The manner of which may be ſeen in the journals of that parliament, and the hiſtories of thoſe times. *Stephens.*

CLXI. To the Lord Viſcount VILLIERS.

My very good Lord,

I THINK his Majeſty was not only well adviſed, but well inſpired, to give order for this ſame wicked child of *Cain*, *Bertram*, to be examined before he was farther proceeded with. And I for my part, before I had received his Majeſty's pleaſure by my Lord Chamberlain, went thus far; that I had appointed him to be farther examined, and alſo had taken order with Mr. Solicitor that he ſhould be provided to make ſome declaration at his trial in ſome ſolemn faſhion, and not to let ſuch a ſtrange murder paſs, as if it had been but a horſe-ſtealing.

BUT upon his Majeſty's pleaſure ſignified, I forthwith cauſed the trial to be ſtaid, and examined the party according to his Majeſty's queſtions; and

alſo ſent for the principal counſel in the cauſe; whereupon Sir *John Tyndal*'s report was grounded, to diſcern the juſtice or iniquity of the ſaid report as his Majeſty likewiſe commanded.

I ſend therefore the caſe of *Bertram* truly ſtated and collected, and the examination taken before my ſelf and Mr. Sollicitor; whereby it will appear to his Majeſty that Sir *John Tyndal* (as to this cauſe) is a kind of a martyr: For if ever he made a juſt report in his life, this was it.

But the event ſince all this is, that this *Bertram* being, as it ſeemeth, indurate or in deſpair, hath hanged himſelf in priſon; of which accident, as I am ſorry, becauſe he is taken from example and publick juſtice, ſo yet I would not for any thing it had been before his examination; ſo that there may be otherwiſe ſome occaſion taken either by ſome declaration in the King's-bench upon the return of the coroner's inqueſt, or by ſome printed book of the fact, or by ſome other means (whereof I purpoſe to adviſe with my Lord Chancellor) to have both his Majeſty's royal care, and the truth of the fact, with the circumſtances, manifeſted and publiſhed †.

For the taking a toy of my Lord Chief Juſtice before he was placed, it was done before your letter came; and on *Tueſday Heath* and *Shute* ſhall be admitted and all perfected.

My Lord Chancellor purpoſeth to be at the hall to-morrow, to give my Lord Chief Juſtice his oath; I pray God it hurt him not this cold weather. God ever proſper you.

Your true and moſt devoted ſervant,

Sunday night, *Nov.* 17. 1616. Fr. Bacon.

† This *Bertram*, who, according to *Camden* in his annals of King *James*, was a grave man of above 70 years of age, and of a clear reputation, piſtolled Sir *John Tyndal* a maſter in chancery on the 12th of *November*, for making a report againſt him, in a cauſe where a ſum contended for did not exceed 200 *l.* By his examination taken the 16th, he confeſſed it to be as foul a murther as ever was; under the ſenſe of which he hanged himſelf the next day. *Stephens.*

From the Original.

CLXII. To Sir *Francis Bacon*, his Majeſty's Attorney General. *

SIR,

I Have acquainted his Majeſty with your letter, and the other papers incloſed, who liketh very well of the courſe you purpoſe touching the *manifeſt* to be publiſhed of *Bertram*'s fact: And will have you, according to your own motion, adviſe with my Lord Chancellor of the manner of it. His Majeſty's pleaſure likewiſe is, that according to the declaration he made before the lords of his council at *Whitehall*, touching the review of my Lord *Coke*'s reports, you draw a warrant ready for his ſignature, directed to thoſe judges whom he then named to that effect, and ſend it ſpeedily to him to be ſigned, that there may be a diſpatch of that buſineſs before the end of this term. And ſo I reſt,

Your faithful friend at command,

Newmarket, 19 *Nov.* 1616. George Villiers.

The Caſe of *John Bertram.*

Leonard Chamberlayne died inteſtate without iſſue, and left a ſiſter married to *Bertram*, and a niece afterwards married to Sir *George Simeon*.

The

THE niece obtained letters of adminiſtration, and did adminiſter; but afterwards upon appeal, *Bertram* in the right of his wife (that was the ſiſter) obtained the former adminiſtration to be repealed, and new letters of adminiſtration to be committed to *Bertram* and his wife, becauſe the ſiſter was nearer of kin than the niece.

THEREUPON *Bertram* brings his bill in chancery againſt the firſt adminiſtratrix, to diſcover the true ſtate of the inteſtate, and to have it ſet over unto him, being the rightful adminiſtrator; and this cauſe coming to hearing, it did appear that there was a debt of 200 *l.* owing by one *Harris* to the inteſtate: Whereupon it was decreed, that the debt of *Harris* by bond ſhould be ſet over to *Bertram*, and likewiſe that all other moneys, debts and bonds ſhould be aſſigned over to him. In the penning of this decree there was an error or ſlip; for it was penned that a debt by *Harris* by a bond of 200 *l.* ſhould be ſet over, whereas the proofs went plainly that it was but 200 *l. in toto* upon divers ſpecialties and writings. Upon this pinch and advantage *Bertram* moved ſtill that the bond of 200 *l.* ſhould be brought in, and at laſt the defendant alledging that there was no ſuch bond, the court ordered that the money itſelf, *viz.* 200 *l.* ſhould be brought in; which was done accordingly, and ſoon after by order of the court it was paid over to *Bertram*.

WHEN *Bertram* had this 200 *l.* in his purſe, he would needs ſurmiſe, that there was another 200 *l.* due by *Harris* upon accompt beſides the 200 *l.* due by one ſingular bond, and ſtill preſſed the words of the decree which mentions a bond, and thereupon got his adverſary Sir *George Simeon* committed. Afterwards it was moved upon *Simeon*'s part, that there was only one debt of 200 *l.* and that the decree was miſtaken in the penning of it, and ſo muſt needs be underſtood, becauſe the decree muſt be upon the proofs, and all the proofs went but upon the 200 *l. in toto*, and not upon any particular bond: whereupon my Lord Chancellor referred the conſideration of the proofs, and the comparing of them with the decree, to Sir *John Tyndal* and Doctor *Amye*.

THEY reported (which was the killing report) that upon the proofs there was but one 200 *l.* in all, and that had been eagerly followed by *Bertram*, and that *Simeon* had ſuffered by error and miſtaking, and that it were time he were releaſed (which was a moſt juſt and true report) and yet it concluded (as is uſed in ſuch caſes) that they referred it to the better judgment of the court; and the court upon the reading of that report gave order that the plaintiff *Bertram* ſhould ſhew cauſe by a day why *Simeon* ſhould not be enlarged, and the plaintiff *Bertram* diſmiſſed. And before the day prefixed to ſhew cauſe, *Bertram* piſtolled Sir *John Tyndal*.

CLXIII. To the Lord Viſcount VILLIERS.

My very good Lord,

I AM glad to find your lordſhip mindful of your own buſineſs, and if any man put you in mind of it, I do not diſlike that neither; but your lordſhip may aſſure your ſelf in whatſoever you commit to me, your lordſhip's farther care ſhall be needleſs: For I deſire to take nothing from my maſter and my friend but care; and therein I am ſo covetous, as I will leave them as little as may be.

Now therefore things are grown to a concluſion, touching your land and office, I will give your lordſhip an account of that which is paſſed; and acquaint your judgment (which I know to be great and capable of any thing) with your own buſineſs; that you may diſcern the difference between doing things ſubſtantially, and between ſhuffling and talking: and firſt for your patent.

FIRST,

First, It was my counſel and care that your book ſhould be fee-farm, and not fee-ſimple; whereby the rent of the crown in ſucceſſion is not diminiſhed, and yet the quantity of the land, which you have upon your value is enlarged; whereby you have both honour and profit.

Secondly, By the help of Sir *Lyonel Cranfield* I advanced the value of *Sherbourn* from 26000 *l.* (which was thought and admitted by my Lord Treaſurer and Sir *John Deccombe*, as a value of great favour to your lordſhip, becauſe it was a thouſand pound more than it was valued at to *Somerſet*,) to thirty two thouſand pounds; whereby there was ſix thouſand pounds gotten, and yet juſtly.

Thirdly, I adviſed the courſe of rating *Hartington* at a hundred years purchaſe, and the reſt at thirty five years purchaſe fee-farm, to be ſet down and expreſſed in the warrant; that it may appear and remain of record, that your lordſhip had no other rates made to you in favour, than ſuch as purchaſes upon ſale are ſeldom drawn unto; whereby you have honour.

Fourthly, That leaſe to the feoffees, which was kept as a ſecret in the decke (and was not only of *Hartington*, but alſo of moſt of the other particulars in your book) I cauſed to be throughly looked into and provided for; without which your aſſurance had been nothing worth: and yet I handled it ſo, and made the matter ſo well underſtood, as you were not put to be a ſuitor to the Prince for his good will in it, as others ignorantly thought you muſt have done.

Fifthly, The annexation*, (which no body dreamt of, and which ſome idle bold lawyer would perhaps have ſaid had been needleſs; and yet is of that weight, that there was never yet any man that would purchaſe any ſuch land from the King, except he had a declaration to diſcharge it;) I was provident to have it diſcharg'd by declaration.

Sixthly, Leſt it ſhould be ſaid that your lordſhip was the firſt (except the Queen and the Prince) that brake the annexation, upon a mere gift; for that others had it diſcharged only upon ſale, which was for the King's profit and neceſſity; I found a remedy for that alſo, becauſe I have carved it in the declaration, as that this was not gift to your lordſhip, but rather a purchaſe and exchange (as indeed it was) for *Sherbourn*.

Seventhly and laſtly, I have taken order (as much as in me was) that your lordſhip in theſe things which you have paſſed be not abuſed, if you part with them; for I have taken notes in a book of their values and former offers.

Now for your office.

First, Whereas my Lord *Teynham*, at the firſt, would have had your lordſhip have had but one life in it, and he another; and my Lord Treaſurer and the Sollicitor, and *Deccombe*, were about to give way to it; I turned utterly that courſe, telling them that you were to have two lives in it, as well as *Somerſet* had.

Secondly, I have accordingly in the aſſurance from your deputies, made them acknowledge the truſt, and give ſecurity not only for your lordſhip's time, but after; ſo as you may diſpoſe (if you ſhould die, which I would be ſorry to live to) the profits of the office by your will, or otherwiſe, to any of your friends for their comfort and advancement.

Thirdly, I dealt ſo with *Whitlocke* as well as *Heath*, as there was no difficulty made of the ſurrender.

* The annexation, by which lands, &c. were united or annexed to the duchies of *Cornwal* and *Lancaſter*.

LASTLY, I did caſt with my ſelf, that if your lordſhip's deputies had come in by Sir *Edward Coke*, who was tyed to *Somerſet*, it would have been ſubject to ſome clamour from *Somerſet*, and ſome queſtion what was forfeited by *Somerſet*'s attainder (being but of felony) to the King; but now they coming in from a new Chief Juſtice, all is without queſtion or ſcruple.

THUS your lordſhip may ſee my love and care towards you, which I think infinitely too little in reſpect of the fulneſs of my mind; but I thought good to write this, to make you underſtand better the ſtate of your own buſineſs; doing by you as I do by the King; which is, to do his buſineſs ſafely and with foreſight, not only of to-morrow or next day, but afar off †; and not to come fiddling with a report to him what is done every day, but to give him up a good ſum in the end.

I PURPOSE to ſend your lordſhip a kalendar fair written of thoſe evidences which concern your eſtate, for ſo much as have paſſed my hands; which in truth are not fit to remain with ſollicitors, no nor with friends, but in ſome great cabinet to be made for that purpoſe.

ALL this while I muſt ſay plainly to your lordſhip, that you fall ſhort for your preſent charge, except you play the good huſband; for the office of *Teynham* is in reverſion, *Darcy*'s land is in reverſion; all the land in your books is but in reverſion, and yields you no preſent profit, becauſe you pay the fee-farm. So as you are a ſtrange *Heteroclite* in grammar, for you want the preſent tenſe; many verbs want the praeterperfect tenſe, and ſome the future tenſe, but none want the preſent tenſe. I will hereafter write to your lordſhip, what I think of for that ſupply; to the end that you may, as you have begun to your great honour, deſpiſe money, where it croſſeth reaſon of ſtate or virtue. But I will trouble you no farther at this time. God ever preſerve and proſper your lordſhip.

Your true and moſt devoted ſervant,

Nov. 29. 1616. FR. BACON.

† Certainly the wiſdom of foreſight and prevention, is far above the wiſdom of remedy; and yet I fear the following obſervation Sir *Francis Bacon* makes in his eſſay of empire, concerning the times in or near which he lived, hath been verified too much in others. 'This is true, that 'the wiſdom of all theſe later times in princes affairs, is rather fine deliveries and ſhiftings of 'dangers and miſchiefs when they are near, than ſolid or grounded courſes to keep them aloof. But 'this is but to try maſteries with fortune; and let men beware how they neglect and ſuffer matter 'of trouble to be prepared; for no man can forbid the ſpark, nor tell whence it may come.' Vol. III. p. 327.

CLXIV. To the Lord Viſcount VILLIERS, about Duels.

My very good Lord,

I DELIVERED the proclamation for cloth to Secretary *Winwood* on *Saturday*, but he keepeth it to carry it down himſelf, and goeth down, as I take it, to-day: his Majeſty may perceive by the docket of the proclamation, that I do not only ſtudy, but act that point touching the judges, which his Majeſty commandeth in your laſt.

YESTERDAY was a day of great good for his Majeſty's ſervice, and the peace of this kingdom concerning duels, by occaſion of *Darcy*'s caſe. I ſpake big, and publiſhing his Majeſty's ſtrait charge to me, ſaid it had ſtruck me blind; as in point of duels and cartels, *&c.* I ſhould not know a coronet from a hatband. I was bold alſo to declare how excellently his Majeſty had expreſſed to me a contemplation of his touching duels; that is, that when he came

came forth and ſaw himſelf princely attended with goodly nobleſs and gentlemen, he entered into the thought, that none of their lives were in certainty not for twenty four hours from the duel; for it was but a heat or a miſtaking, and then a lye, and then a challenge, and then life: ſaying, that I did not marvel ſeeing *Xerxes* ſhed tears, to think none of his great army ſhould be alive once within a hundred years, his Majeſty were touched with compaſſion to think that not one of his attendance but might be dead within twenty four hours by the duel. This I write becauſe his Majeſty may be wary, what he ſaith to me (in things of this nature) I being ſo apt to play the blab. In this alſo I forgot not to prepare the judges, and wiſh them to profeſs, and as it were to denounce, that in all caſes of duel capital before them, they will uſe equal ſeverity towards the inſolent murder by the duel, and the inſidious murder; and that they will extirpate that difference out of the opinions of men, which they did excellent well.

I MUST alſo ſay, that it was the firſt time that I heard my Lord of *Arundel* ſpeak in that place; and I do aſſure your lordſhip he doth excellently become the court; he ſpeaketh wiſely and weightily, and yet eaſily and clearly, as a great nobleman ſhould do †.

THERE hath been a proceeding in the King's-bench againſt *Bertram*'s keeper, for miſdemeanor, and I have put a little pamphlet (prettily penn'd by one Mr. *Trotte*, that I ſet on work touching the whole buſineſs) to the preſs by my Lord Chancellor's advice.

I PRAY God direct his Majeſty in the cloth buſineſs, that that thorn may be once out of our ſides. His Majeſty knoweth my opinion *ab antiquo*. Thanks be to God for your health, and long may you live to do us all good. I reſt,

Your true and moſt devoted ſervant,

FR. BACON.

† My Lord of *Arundel* deſcended from the noble family of the *Howards*; his grandfather the Duke of *Norfolk* loſing his life upon the account of *Mary* Queen of the *Scots*, and his father ſuffering ſome years impriſonment under ſentence of condemnation; he was reſtored in blood, and to the titles of *Arundel* and *Surry*, 1 Jac. made a privy counſellor on the 25th of *July* 1616. and afterwards earl marſhal of *England*, and general of the army ſent againſt the *Scots* by K. *Charles* I. But about the beginning of our civil wars he retired into *Italy*, where he had ſpent part of his youth, and returned to the religion he had profeſſed, dying at *Padua* in 1646. He was a gentleman of a noble aſpect, and of a noble nature, a great virtuoſo and antiquary, who with much care and coſt procured many valuable antiquities and inſcriptions to be brought from *Aſia*, *Greece*, and *Italy* into *England*, and placed them in or near his garden at *Arundel* houſe in the *Strand*; ſeveral of which were very generouſly preſented by his grandſon the Duke of *Norfolk* to the univerſity of *Oxford*, where they are among others of the famous *Selden* fixed to the walls encloſing the theatre. It were to be wiſhed, that the great number of ancient ſtatues which adorned his houſe and gardens, and have ſince been much neglected, had met with as ſafe a repoſitory. The eloquence which Sir *Francis Bacon* doth here commend in this lord, is much the ſame which in the beginning of his advancement of learning he doth attribute to the King, in the words of *Tacitus*, concerning *Auguſtus Caeſar*; *Auguſto profluens, & quae principem decerent, eloquentia fuit.*

From the Original.

CLXV. To the Lord Viſcount VILLIERS.*

It may pleaſe your Lordſhip,

I PRAY let his Majeſty underſtand, that although my Lord Chancellor's anſwer touching the diſmiſſion of the *Farmers* cauſe, was full of reſpect and duty, yet I would be glad to avoid an expreſs ſignification from his Majeſty, if his Majeſty may otherwiſe have his end. And therefore I have thought

of a courſe, that a motion be made in open Court, and that thereupon my lord move a compromiſe to ſome to be named on either part, with bond to ſtand to their award. And as I find this to be agreeable to my Lord Chancellor's diſpoſition, ſo I do not find but the *Farmers* and the other party are willing enough towards it. And therefore his Majeſty may be pleaſed to forbear any other letter or meſſage touching that buſineſs. God ever keep your lordſhip.

Your Lordſhip's true and moſt devoted ſervant,

Jan. 23. 1616. FR. BACON.

CLXVI. This letter was written to the Earl of BUCKINGHAM, on the ſame day Sir FRANCIS BACON was declared Lord Keeper of the Great Seal.

My deareſt Lord,

IT is both in cares and kindneſs, that ſmall ones flote up to the tongue, and great ones ſink down into the heart in ſilence. Therefore I could ſpeak little to your lordſhip to-day, neither had I fit time: but I muſt profeſs thus much, that in this day's work you are the trueſt and perfecteſt mirror and example of firm and generous friendſhip that ever was in court. And I ſhall count every day loſt, wherein I ſhall not either ſtudy your well-doing in thought, or do your name honour in ſpeech, or perform you ſervice in deed. Good my lord, account and accept me,

Your moſt bounden and devoted friend and ſervant of all men living,

March 7. 1616. FR. BACON, *C. S.*

From the Original.

CLXVII. To the Earl of BUCKINGHAM.*

My ſingular good Lord,

WHEN I heard here your lordſhip was dead, I thought I had lived too long. That was (to tell your lordſhip truely) the ſtate of my mind upon that report. Since, I hear it was an idle miſtaking of my Lord *Evers* for my Lord *Villiers*. God's name be bleſſed, that you are alive to do infinite good, and not ſo much as ſick or ill diſpoſed for any thing I now hear.

I HAVE reſigned the Prince's Seal, and my Lord *Hobart* is placed. I made the Prince laugh, when I told him I reſigned it with more comfort than I received it; he underſtanding me that I had changed for a better: But after I had given him that thought, I turned it upon this, that I left his ſtate and buſineſs in good caſe, whereof I gave him a particular account.

THE Queen calleth upon me for the matter of her Houſe, wherein your Lordſhip and my Lord Chamberlain and I dealt, and received his Majeſty's direction, ſo that I ſhall prepare a warrant firſt to my Lord Treaſurer and Mr. Chancellor (for that is the right way) to adviſe how to ſettle it by aſſignment, in caſe ſhe ſurvive his Majeſty, which I hope in God ſhe ſhall not.

HER deſire was expreſsly and of her ſelf, that when I had prepared a warrant to be ſent to his Majeſty, I ſhould ſend it by your lordſhip's hands.

WE

We ſit in council, that is all I can yet ſay; Sir *John Denham* is not come, upon whoſe coming the King ſhall have account of our conſultations touching *Ireland*, which we cannot conclude, till we have ſpoken with him; God ever preſerve and proſper you.

It grieveth me much that I cannot hear enough of his Majeſty's good diſpoſition of health, and his pleaſures, and other ordinary occurrences of his journey, I pray your lordſhip will direct Mr. *Packer* to write to me ſometime of matters of that kind; I have made the like requeſt to Sir *Edward Villiers*, by whom I write this preſent, to whoſe good affection I think my ſelf beholden, as I do alſo eſteem him much for his good parts, beſides his nearneſs to your lordſhip, which bindeth me above all.

Your Lordſhip's moſt faithful and devoted friend and ſervant.

7 Apr. 1617. Fr. Bacon, *C. S.*

CLXVIII. To the renowned Univerſity of Cambridge, his dear and reverend Mother.

I Am debtor to you of your letters, and of the time likewiſe, that I have taken to anſwer them. But as ſoon as I could chuſe what to think on, I thought good to let you know; that although you may err much in your valuation of me, yet you ſhall not be deceived in your aſſurance: and for the other part alſo, though the manner be to mend the picture by the life; yet I would be glad to mend the life by the picture, and to become, and be, as you expreſs me to be. Your gratulations ſhall be no more welcome to me, than your buſineſs or occaſions; which I will attend; and yet not ſo, but that I ſhall endeavour to prevent them by my care of your good. And ſo I commend you to God's goodneſs.

Your moſt loving and aſſured friend and ſon,

Gorhambury, Apr. 12. 1617. Fr. Bacon, *C. S.*

CLXIX. To the Earl of Buckingham.

My ſingular good Lord,

I Am now for five or ſix days retired to my houſe in the country: for I think all my lords are willing to do as ſcholars do, who though they call them holy-days, yet they mean them play-days.

We purpoſe to meet again on *Eaſter-Monday*, and go all to the ſpittal ſermon for that day, and therein to revive the ancient religious manner; when all the council uſed to attend thoſe ſermons, which ſome neglect in Queen *Elizabeth*'s time, and his Majeſty's great devotion in the due hearing of ſermons himſelf with his council at the court, brought into deſuetude. But now our attendance upon his Majeſty, by reaſon of his abſence, cannot be, it is not amiſs to revive.

I perceive by a letter your lordſhip did write ſome days ſince to my Lord *Brackley*, that your lordſhip would have the King ſatisfied by precedents, that letters patents might be of the dignity of an earldom without delivery of the patent by the King's own hand, or without the ordinary ſolemnities of a creation. I find precedents ſomewhat tending to the ſame purpoſe, yet not matching fully. But howſoever let me, according to my faithful and free manner of dealing with your lordſhip, ſay to you, that ſince the King

means it, I would not have your lordſhip for the ſatisfying a little trembling or panting of the heart in my Lord or Lady *Brackley*, to expoſe your lordſhip's ſelf, or myſelf (whoſe opinion would be thought to be rely'd upon) or the King our maſter to envy with the nobility of this realm; as to have theſe ceremonies of honour diſpenſed with, which in conferring honour have uſed to be obſerved, like a kind of *doctor Bullatus* without the ceremony of a commencement: The King and you know I am not ceremonious in nature, and therefore you may think (if it pleaſe you) I do it in judgment. God ever preſerve you.

Your Lordſhip's moſt faithful and devoted friend and ſervant,

FR. BACON, *C. S.*

I purpoſe to ſend the precedents themſelves by my Lord of *Brackley*; but I thought fit to give you ſome taſte of my opinion before,

Gorhambury, Apr. 13. 1617.

From the Original.

CLXX. To the Earl of BUCKINGHAM.*

My ſingular good Lord,

I PRAY your lordſhip to deliver to his Majeſty the incloſed.

I SEND your lordſhip alſo the warrant to my Lord Treaſurer and Mr. Chancellor of the Exchequer for the † Queen's houſe; it is to come again to the King, when the bill is drawn for the letters patents: for this is only the warrant to be ſigned by his Majeſty.

† *Somerſet-Houſe.*

I ASKED the Queen whether ſhe would write to your lordſhip about it; her anſwer was very modeſt and diſcreet, that becauſe it proceeded wholly from his Majeſty's kindneſs and goodneſs, who had referred it, it was not ſo fit for her to write to your lordſhip for the diſpatch of it, but ſhe deſired me to thank your lordſhip for your former care of it, and to deſire you to continue it: And withal ſhe deſireth your lordſhip not to preſs his Majeſty in it, but to take his beſt times. This anſwer (becauſe I like it ſo well) I write to you at large, for other matters I will write by the next. God ever proſper you and preſerve you.

Your Lordſhip's moſt faithful and devoted friend and ſervant,

London, 19 Apr. 1617. FR. BACON, *C. S.*

CLXXI. To Mr. MATTHEWS, in reflection upon ſome Aſtronomers in *Italy*.

SIR,

I WRITE to you chiefly now, to the end, that by the continuance of my acquaintance with you by letters, you may perceive how much I deſire, and how much I do not deſpair of the recontinuance of our acquaintance by converſation. In the mean time, I wiſh you would deſire the aſtronomers of *Italy* to amuſe us leſs than they do with their fabulous and fooliſh traditions, and come nearer to the experiments of ſenſe; and tell us, that when all the planets, except the moon, are beyond the line in the other hemiſphere for ſix months together, we muſt needs have a cold winter, as we ſaw it was the laſt year. For underſtanding that this was general over all theſe parts of the world; and finding that it was cold weather with all winds,

and

and namely weſt-wind, I imagined there was ſome higher cauſe of this effect; tho' yet I confeſs I thought not that ever I ſhould have found that cauſe ſo palpable a one as it proved; which yet, when I came quickly afterwards to obſerve, I found alſo very clearly, that the ſummer muſt needs be cold too; tho' yet it were generally thought, that the year would make a ſhift to pay itſelf, and that we ſhould be ſure to have heats for our cold. You ſee, that tho' I be full of buſineſs, yet I can be glad rather to lay it all aſide, than to ſay nothing to you. But I long much more to be ſpeaking often with you, and I hope I ſhall not long want my wiſh.

CLXXII. To the KING, about the *Spaniſh* Match.

It may pleaſe your moſt excellent Majeſty,

MR. Vice-Chamberlain hath acquainted myſelf and the reſt of the commiſſioners for the marriage with *Spain*, which are here, with your Majeſty's inſtructions, ſigned by your royal hands, touching that point of the ſuppreſſing of pirates, as it hath relation to his negotiation; whereupon we met yeſterday at my Lord Admiral's at *Chelſea*, becauſe we were loth to draw my lord into the air, being but newly upon his recovery *.

WE conceive the parts of the buſineſs are four: the charge; the confederations, and who ſhall be ſolicited or retain'd to come in; the forces and the diſtributions of them; and the enterprize. We had only at this time conference amongſt our ſelves, and ſhall appoint (after the holy-days) times for the calling before us ſuch as are fit, and thereupon perform all the parts of your royal commandments.

IN this conference I met with ſomewhat which I muſt confeſs was altogether new to me, and open'd but darkly neither; whereof I think Mr. Vice-Chamberlain will give your Majeſty ſome light, for ſo we wiſhed. By occaſion whereof I hold it my duty, in reſpect of the great place wherein your Majeſty hath ſet me, (being only made worthy by your grace) which maketh it decent for me to counſel you *ad ſummas rerum*, to intimate or repreſent to your Majeſty thus much.

I do foreſee, in my ſimple judgment, much inconvenience to inſue, if your Majeſty proceed to this treaty with *Spain*, and that your council draw not all one way. I ſaw the bitter fruits of a divided council the laſt parliament; I ſaw no very pleaſant fruits thereof in the matter of the cloth. This will be of equal, if not more inconvenience; for whereſoever the opinion of your people is material (as in many caſes it is not) there, if your council be united, they ſhall be able almoſt to give law to opinion and rumour; but if they be divided, the infuſion will not be according to the ſtrength and virtue of the votes of your council, but according to the aptneſs and inclination of the popular. This I leave to your Majeſty in your high wiſdom to remedy: Only I could wiſh that when Sir *John Digby*'s inſtructions are perfected, and that he is ready to go, your Majeſty would be pleas'd to write ſome formal letter to the body of your council, (if it ſhall be in your abſence) ſignifying to them your reſolution in general, to the end, that when deliberation ſhall be turn'd into reſolution, no man, howſoever he may retain the inwardneſs of his opinion, may be active *in contrarium*.

* *Charles* Lord *Howard* of *Effingham* and Earl of *Nottingham*, was, as Sir *Robert Naunton* obſerves, as goodly a gentleman for perſon as the times had any; which is confirmed by Mr. *Oſbourn*, although his eyes met not with him, till he was turned towards the point of eighty. He being alſo brave, faithful, and diligent, commanded the fleet as Lord High Admiral upon ſeveral occaſions, particularly againſt the *Spaniſh Armado* 1588. But in the later end of the year 1618, he ſurrendered this honourable place to the King, (who confer'd it upon the Marquis of *Buckingham*;) and died in the year 1624, and of his age the 88th.

THE

THE letters of my lords of the council with your Majeſty, touching the affairs of *Ireland*, written largely and articulately, and by your Majeſty's direction, will much facilitate our labours here; though there will not want matter of conſultation thereupon. God ever preſerve your Majeſty ſafe and happy.

Your Majeſty's moſt devoted and obliged ſervant,

London, April 19. 1617. FR. BACON, *C. S.*

CLXXIII. To the Earl of BUCKINGHAM.

My ſingular good Lord,

I SEND your lordſhip, according to the direction of your letter, a note of the precedents that I find in my Lord *Brackley*'s buſineſs; which do rather come near the caſe than match it. Your lordſhip knoweth already my opinion, that I would rather have you conſtant in the matter, than inſtant for the time.

I SEND alſo incloſed an account of council buſineſs by way of remembrance to his Majeſty, which it may pleaſe you to deliver to him.

THE Queen returneth her thanks to your lordſhip, for the diſpatch of the warrant, touching her houſe: I have not yet acquainted the Lord Treaſurer, and Chancellor of the Exchequer with it; but I purpoſe to-morrow to deliver them the warrant, and to adviſe them for the executing the ſame.

I HAVE receiv'd the King's letter with another from your lordſhip, touching the cauſe of the officers, and Sir *Arthur Ingram*, whereof I will be very careful to do them juſtice.

YESTERDAY I took my place in chancery, which I hold only from the King's grace and favour, and your conſtant friendſhip. There was much ado, and a great deal of the world: but this matter of pomp, which is heaven to ſome men, is hell to me, or purgatory at leaſt. It is true, I was glad to ſee that the King's choice was ſo generally approved; and that I had ſo much intereſt in mens good wills and good opinions, becauſe it maketh me the fitter inſtrument to do my maſter ſervice, and my friend alſo.

AFTER I was ſet in chancery, I publiſhed his Majeſty's charge which he gave me when he gave me the ſeal; and what rules and reſolutions I had taken for the fulfilling his commandments. I ſend your lordſhip a * copy of that I ſaid. My Lord *Hay* coming to take his leave of me two days before, I told him what I was meditating, and he deſired me to ſend him ſome remembrance of it; and ſo I could not but ſend him another copy thereof. Men tell me it hath done the King a great deal of honour; inſomuch that ſome of my friends that are wiſe men, and no vain ones, did not ſtick to ſay to me, that there was not theſe ſeven years ſuch a preparation for a parliament; which was a commendation, I confeſs, pleaſed me well. I pray take ſome fit time to ſhew it his Majeſty, becauſe if I miſunderſtood him in any thing, I may amend it, becauſe I know his judgment is higher and deeper than mine.

* See page 271 of this Vol.

I TAKE infinite contentment to hear his Majeſty is in great good health and vigor; I pray God preſerve and continue it. Thus wiſhing you well above all men living, next my maſter and his: I reſt,

Your true and devoted friend and ſervant,

FR. BACON, *C. S.*

Dorſet-houſe, which putteth me in mind to thank your lordſhip, for your care of me touching *York-houſe*, *May* 8. 1617.

CLXXIV.

CLXXIV. An account of council buſineſs, and of other matters committed to me by His MAJESTY.

FIRST, for *May-day*; at which time there was great apprehenſion of tumult by prentices and looſe people; there was never ſuch a ſtill. The remedies that did the effect were three:

FIRST, The putting in muſter of the trained bands and military bands in a brave faſhion that way. Next, the laying a ſtrait charge upon the mayor and aldermen for the city, and juſtices of the peace for the ſuburbs, that the prentices and others might go abroad with their flags and other ganderies; but without weapon of ſhot and pike, as they formerly took liberty to do: which charge was exceeding well performed and obeyed. And the laſt was, that we had according to our warrant dormant, ſtrengthen'd our commiſſions of the peace in *London* and *Middleſex*, with new clauſes of lieutenancy; which as ſoon as it was known abroad all was quiet by the terror it wrought. This I write, becauſe it maketh good my farther aſſurance I gave his Majeſty at his firſt removes, that all ſhould be quiet, for which I receiv'd his thanks.

FOR the *Iriſh* affairs, I received this day his Majeſty's letter to the lords, which we have not yet open'd, but ſhall ſit upon them this afternoon. I do not forget, beſides the points of ſtate, to put my Lord Treaſurer in remembrance, that his Majeſty laid upon him the care of the improvement of the revenue of *Ireland* by all good means, of which I find his lordſhip very careful, and I will help him the beſt I can.

THE matter of the revenue of the recuſants here in *England*, I purpoſe to put forward by a conference with my Lord of *Canterbury*, upon whom the King laid it, and upon Secretary *Winwood*; and becauſe it is matter of the exchequer, with my Lord Treaſurer and Mr. Chancellor; and after to take the aſſiſtance of Mr. Attorney, and the learned counſel; and when we have put it in a frame, to certify his Majeſty.

THE buſineſs of the pirates is, I doubt not, by this time come to his Majeſty, upon the letters of us the commiſſioners, whereof I took ſpecial care; and I muſt ſay I find Mr. Vice-chamberlain a good able man with his pen. But to ſpeak of the main buſineſs, which is the match with *Spain*, the King knows my mind by a former letter; that I would be glad it proceedeth with an united council; not but that votes and thoughts are to be free: but yet after a King hath reſolved, all men ought to co-operate, and neither to be active nor much locutive *in oppoſitum*; eſpecially in a caſe where a few diſſenting from the reſt, may hurt the buſineſs *in foro famae*.

YESTERDAY, which was my weary day, I bid all the judges to dinner, (which was not uſed to be,) and entertained them in a private withdrawing chamber, with the learned counſel. When the feaſt was paſſed I came amongſt them, and ſat me down at the end of the table, and pray'd them to think I was one of them, and but a foreman. I told them I was weary and therefore muſt be ſhort, and that I would now ſpeak to them upon two points. Whereof the one was, that I would tell them plainly, that I was firmly perſuaded, that the former diſcords and differences between the chancery and other courts, were but fleſh and blood; and that now the men were gone, the matter was gone; and that for my part as I would not ſuffer any the leaſt diminution or derogation from the ancient and due power of the chancery, ſo if any thing ſhould be brought to them at any time, touching the pro-

ceedings of the chancery, which did ſeem to them exorbitant or inordinate, that they ſhould freely and friendly acquaint me with it, and we ſhould ſoon agree; or if not, we had a maſter that could eaſily both diſcern and rule. At which ſpeech of mine, beſides a great deal of thanks and acknowledgment, I did ſee chear and comfort in their faces, as if it were a new world.

THE ſecond point was, that I let them know how his Majeſty, at his going, gave me charge to call and receive from them the accounts of their circuits, according to his Majeſty's former preſcript to be ſet down in writing; and that I was to tranſmit the writings themſelves to his Majeſty; and accordingly as ſoon as I have receiv'd them I will ſend them to his Majeſty.

SOME two days before I had a conference with ſome judges, (not all, but ſuch as I did chuſe) touching the high commiſſion, and the extending of the ſame in ſome points; which I ſee I ſhall be able to diſpatch by conſent, without his Majeſty's farther trouble.

I did call upon the committees alſo for the proceeding in the purging of Sir *Edward Coke*'s reports, which I ſee they go on with ſeriouſly. *

THANKS be to God, we have not much to do for matters of council, and I ſee now that his Majeſty is as well able by his letters to govern *England* from *Scotland*, as he was to govern *Scotland* from *England*.

* During the time that my Lord Chief Juſtice *Coke* lay under the diſpleaſure of the court, ſome information was given to the King, that he having publiſhed eleven books of reports, had written many things againſt his Majeſty's prerogative. And being commanded to explain ſome of them, my Lord Chancellor *Elleſmere* doth thereupon in his letter of 22 *Octob.* 1616, write thus to the King: 'According to your Majeſty's directions ſignified unto me by Mr. Sollicitor, I called the Lord Chief 'Juſtice before me on *Thurſday* the 17th inſtant, in preſence of Mr. Attorney, and others of your 'learned counſel. I did let him know your Majeſty's acceptance of the few animadverſions, which 'upon review of his own labours he had ſent, tho' fewer than you expected, and his excuſes other 'than you expected': And did at the ſame time inform him, that his Majeſty was diſſatisfied with ſeveral other paſſages therein; and thoſe not the principal points of the caſes judged, but deliver'd by way of expatiation, and which might have been omitted without prejudice to the judgment; of which ſort the Attorney and Sollicitor-General did for the preſent only ſelect five, which being deliver'd to the Chief Juſtice on the 17th of *October*, he returns his anſwers at large upon the 21ſt of the ſame month, the which I have ſeen under his own hand. 'Tis true the Lord Chancellor wiſhed he might have been ſpared all ſervice concerning the Chief Juſtice, as remembring the fifth petition of *dimitte nobis debita noſtra, &c.* Inſomuch that though a committee of judges was appointed to conſider theſe books, yet the matter ſeems to have ſlept, till after Sir *Fra. Bacon* was made Lord Keeper, it revived, and two judges more were added to the former. Whereupon Sir *Edward Coke* doth by his letter make his humble ſuit to the Earl of *Buckingham*, 1. That if his Majeſty ſhall not be ſatisfied with his former offer, *viz.* by the advice of the judges, to explain and publiſh thoſe points, ſo as no ſhadow may remain againſt his prerogative; that then all the judges of *England* may be called thereto. 2. That they might certify alſo what caſes he had publiſhed for his Majeſty's prerogative and benefit, for the good of the church, and quieting mens inheritances, and good of the commonwealth. But Sir *Edward* then or ſoon after coming into favour by the marriage of his daughter, I conceive there was no farther proceedings in this affair. It will be needleſs for me to declare what reputation theſe books have among the profeſſors of the law; but I cannot omit upon this occaſion, to take notice of a character Sir *Fr. Bacon* had ſome time before given them in his propoſition to the King, touching the compiling and amendment of the laws of *England*. 'To give every man his due, had it not been for Sir *Edward Coke*'s reports (which though 'they may have errors, and ſome peremptory and extrajudicial reſolutions more than are warranted, 'yet they contain infinite good deciſions and rulings over of caſes;) the law by this time had been 'almoſt like a ſhip without ballaſt: for that the caſes of modern experience, are fled from thoſe 'that are adjudged and ruled in former time.' *Stephens.* See p. 3. of this Vol.

CLXXIV. A note of ſome precedents as come neareſt the caſe of the Lord *Brackley*: referred to in the foregoing letter.

THE Lord *Hay* was created Baron of *Sawley*, 28 *Junii*, 13 *Regis*, without the ceremony of robing, (as I take it;) but then the patent was (as I conceive it alſo) delivered to the perſon of the ſaid Lord *Hay* by the King's

King's own hands; and again, the dignity of a Baron hath incident to it only the ceremony of robes, and not the cincture of the ſword, coronet, &c.

The Duke of *Lenox* was created Earl of *Richmond*, 6 *Octobris* 11 *Regis*, without any of the ceremonies (as I take it;) but the patent (as I conceive it alſo) was deliver'd to the perſon of the ſaid Duke, with the hands of the King: and again, in regard he was inveſted of the ſuperiour dignity of Duke of *Scotland*, the ceremonies were not ſo fit to be iterated.

King *Henry* VII created *Edward Courtenay* Knight, Earl of *Devon*, 26 *Octobris*, 1 *Regni*, *teſte meipſo apud Weſtmonaſterium*, &c. Whereby it may be collected, that it was done without the ſolemnities; for that where the ſolemnities were performed, it hath uſed to be with a *hiſce teſtibus*, and not *teſte meipſo*; and whether it were deliver'd with the King's hand or not, it appears not.

EDWARD VI created *William* Earl of *Eſſex*, Marquis of *Northampton*, 16 *Feb.* 1 *Edw.* VI. and it is mentioned to be *per cincturam gladii, cappam honoris, & circuli aurei impoſitionem*; but whether the delivery was by the King's own hand *non conſtat*, but it was *teſte meipſo*, and not *hiſce teſtibus*.

The ſame King created *John* Viſcount *L'Iſle*, Earl of *Warwick*, the ſame time, and it is mentioned to be *per cincturam gladii*, &c. but it was *teſte meipſo*, and not *hiſce teſtibus*.

EDWARD VI created *Thomas* Lord *Wriotheſley*, Earl of *Southampton* in the ſame day, and in the ſame manner, with a *teſte meipſo*, and not *hiſce teſtibus*. Theſe three creations being made upon one day, and when the King was a child of about nine years old, and in the very entrance of his reign, for the patents bear date at the tower of *London*, doth make me conjecture that all the ſolemnities were performed; but whether the King endured to be preſent at the whole ceremony, and to deliver the patents with his own hand, I doubt; for that I find that the very ſelf-ſame day, year, and place, the King created his uncle the Earl of *Hertford*, to be Duke of *Somerſet per cincturam gladii, cappam honoris, & circuli aurei impoſitionem, & traditionem virgulae aureae*, with a *hiſce teſtibus*, and not *teſte meipſo*, and with a *datum per manus noſtras*: yet theſe things are but conjectural.

I find no precedents for a *non obſtante*, or a diſpenſation with the ſolemnities, as the Lord *Brackley*'s bill was penned.

From the Original.

CLXXV. To the Lord Keeper.*

My honoured Lord,

I Have acquainted his Majeſty with your letter, and the papers that came incloſed, who is exceedingly well ſatisfied with that account you have given him therein, eſpecially with the ſpeech you made at the taking of your place in the chancery. Whereby his Majeſty perceiveth that you have not only given proof how well you underſtand the place of a *Chancellor*, but done him much right alſo, in giving notice unto thoſe that were preſent, that you have received ſuch inſtructions from his Majeſty; whoſe honour will be ſo much the greater, in that all men will acknowledge the ſufficiency and worthineſs of his Majeſty's choice, in preferring a man of ſuch abilities to that place, which beſides cannot but be a great advancement and furtherance to his ſervice: and I can aſſure your lordſhip, that his Majeſty was never ſo well

well pleaſed, as he is with this account you have given him of this paſſage. Thus with the remembrance of my ſervice, I reſt,

Your Lordſhip's ever at command,

Edinburgh, 18 *May* 1617. G. BUCKINGHAM.

From the Original.

CLXXVI. To the Earl of BUCKINGHAM. *

My very good Lord,

I KNOW your lordſhip hath a ſpecial care of any thing that concerneth the Queen. She was entred into diſlike of her Sollicitor, this bearer Mr. *Lowder*, and reſolute in it. To ſerve, and not to pleaſe, is no man's condition. Therefore upon knowledge of her pleaſure he was willing to part with his place, upon hopes not to be deſtituted, but to be preferred to one of the Barons places in *Ireland*. I pray move the King for him, and let his Majeſty know from me that I think (howſoever he pleaſed not here) he is fit to do his Majeſty ſervice in that place; he is grave and formal (which is ſomewhat there) and ſufficient enough for that place. The Queen had made Mr. *Hackwell* her Sollicitor, who hath for a long time taken much pains in her buſineſs, wherein ſhe hath done well. He was an oppoſite in parliament, as *Jones* was, that the King hath made Chief Juſtice of *Ireland*. But I hold it no ill counſel to join, or to remove ſuch men. God preſerve and proſper you.

Your true and devoted friend and ſervant,

Whitehall, 25 *May* 1617. FR. BACON.

CLXXVII. To the Earl of BUCKINGHAM.

My very good Lord,

I SHALL write to your lordſhip of a buſineſs which your lordſhip may think to concern my ſelf; but I do think it concerneth your lordſhip much more. For as for me, as my judgment is not ſo weak to think it can do me any hurt, ſo my love to you is ſo ſtrong, as I would prefer the good of you and yours, before mine own particular.

IT ſeemeth Secretary *Winwood* hath officiouſly buſied himſelf to make a match between your brother and Sir *Edward Coke*'s daughter: and as we hear he doth it rather to make a faction, than out of any great affection to your lordſhip; it is true, he hath the conſent of Sir *Edward Coke* (as we hear) upon reaſonable conditions for your brother; and yet no better than without queſtion, may be found in ſome other matches. But the mother's conſent is not had, nor the young gentlewoman's, who expecteth a great fortune from her mother, which without her conſent is endangered. This match, out of my faith and freedom towards your lordſhip, I hold very inconvenient both for your brother and your ſelf.

FIRST, He ſhall marry into a diſgraced houſe, which in reaſon of ſtate is never held good.

NEXT, He ſhall marry into a troubled houſe of man and wife, which in religion and chriſtian diſcretion is diſliked.

THIRDLY, Your lordſhip will go near to loſe all ſuch your friends as are adverſe to Sir *Edward Coke*; my ſelf only except, who out of a pure love and thankfulneſs ſhall ever be firm to you.

And laſtly and chiefly, (believe it) it will greatly weaken and diſtract the King's ſervice; for though in regard of the King's great wiſdom and depth, I am perſuaded thoſe things will not follow which they imagine; yet opinion will do a great deal of harm, and caſt the King back, and make him relapſe into thoſe inconveniencies which are now well on to be recovered.

Therefore my advice is, and your lordſhip ſhall do your ſelf a great deal of honour, if according to religion and the law of God, your lordſhip will ſignify unto my lady your mother, that your deſire is, that the marriage be not preſſed or proceeded in without the conſent of both parents; and ſo either break it altogether, or defer any farther delay in it, till your lordſhip's return: and this the rather, for that (beſides the inconvenience of the matter it ſelf) it hath been carried ſo harſhly and inconſiderately by Secretary *Winwood*, as, for doubt that the father ſhould take away the maiden by force, the mother to get the ſtart hath convey'd her away ſecretly; which is ill of all ſides. Thus hoping your lordſhip will not only accept well, but believe my faithful advice, who by my great experience in the world, muſt needs ſee farther than your lordſhip can; I ever reſt,

Your Lordſhip's true and moſt devoted friend and ſervant,

Fr. Bacon, *C. S.*

I have not heard from your lordſhip ſince I ſent the King my laſt account of council buſineſs; but I aſſure my ſelf you receiv'd it, becauſe I ſent at the ſame time a packet to Secretary *Lake*, who hath ſignified to me that he hath received it.

I pray your lordſhip deliver to his Majeſty this little note of chancery buſineſs.

July 12. 1617.

CLXXVIII. To the KING.

It may pleaſe your moſt excellent Majeſty,

I Think it agreeable to my duty, and the great obligation wherein I am tied to your Majeſty, to be freer than other men in giving your Majeſty faithful counſel, while things are in paſſing; and more bound than other men in doing your commandments, when your reſolution is ſettled; and made known to me.

I ſhall therefore moſt humbly crave pardon from your Majeſty, if in plainneſs and no leſs humbleneſs, I deliver to your Majeſty my honeſt and diſintereſted opinion, in the buſineſs of the match of Sir *John Villiers*, which I take to be *magnum in parvo*: preſerving always the laws and duties of a firm friendſhip, to my Lord of *Buckingham*, whom I will never ceaſe to love, and to whom I have written already, but have not heard yet from his lordſhip.

But firſt, I have three ſuits to make to your Majeſty, hoping well you will grant them all.

The firſt is, that if there be any merit in drawing on that match, your Majeſty would beſtow the thanks not upon the zeal of Sir *Edward Coke* to pleaſe your Majeſty, nor upon the eloquent perſuaſions or pragmaticals of Mr. Secretary *Winwood*, but upon them, that carrying your commandments and directions with ſtrength and juſtice, in the matter of the governour of

Diepe *, in the matter of Sir *Robert Rich*, and in the matter of protecting the lady, according to your Majeſty's commandment; have ſo humbled Sir *Edw. Coke*, as he ſeeketh now with ſubmiſſion, which (as your Majeſty knoweth) before he rejected with ſcorn: for this is the true orator that hath perſuaded this buſineſs; as I doubt not but your Majeſty in your excellent wiſdom doth eaſily diſcern.

My ſecond ſuit is, that your Majeſty would not think me ſo puſillanimous, as that I, that when I was but Mr. *Bacon*, had ever (through your Majeſty's favour) good reaſon at Sir *Edward Coke*'s hands, when he was at the greateſt, ſhould now, that your Majeſty of your great goodneſs hath placed me ſo near your chair, (being, as I hope, by God's grace, and your inſtructions, made a ſervant according to your heart and hand) fear him or take umbrage of him, in reſpect of mine own particular.

My third ſuit is, that if your Majeſty be reſolved the match ſhall go on, after you have heard my reaſons to the contrary; I may receive therein your particular will and commandments from your ſelf, that I may conform my ſelf thereunto; imagining with my ſelf (though I will not wager on womens minds) that I can prevail more with the mother than any other man. For if I ſhould be requeſted in it from my Lord of *Buckingham*, the anſwers of a true friend ought to be, that I had rather go againſt his mind than againſt his good: but your Majeſty I muſt obey; and beſides I ſhall conceive that your Majeſty, out of your great wiſdom and depth, doth ſee thoſe things, which I ſee not.

Now therefore, not to hold your Majeſty with many words, (which do but drown matter) let me moſt humbly deſire your Majeſty to take into your royal conſideration, that the ſtate is at this time not only in good quiet and obedience, but in a good affection and diſpoſition. Your Majeſty's prerogative and authority having riſen ſome juſt degrees above the horizon more than heretofore, which hath diſperſed vapours: your judges are in good temper; your juſtices of the peace (which is the body of the gentlemen of *England*) grow to be loving and obſequious, and to be weary of the humour of ruffling: All mutinous ſpirits grow to be a little poor, and to draw in their horns; and not the leſs for your Majeſty's diſauthoriſing the man I ſpeak of. Now then I reaſonably doubt, that if there be but an opinion of his coming in, with the ſtrength of ſuch an alliance; it will give a turn and relapſe in mens minds, into the former ſtate of things, hardly to be holpen, to the great weakening of your Majeſty's ſervice.

Again, your Majeſty may have perceived, that as far as it was fit for me in modeſty to adviſe, I was ever for a parliament; which ſeemeth to me to be *cardo rerum* or *ſumma ſummarum* for the preſent occaſions. But this my advice was ever conditional; that your Majeſty ſhould go to a parliament with a council united, and not diſtracted; and that your Majeſty will give me leave never to expect, if that man come in. Not for any difference of mine own, (for I am *omnibus omnia* for your Majeſty's ſervice;) but becauſe he is by nature unſociable, and by habit popular, and too old now to take a new ply. And men begin already to collect, yea and to conclude, that he that raiſeth ſuch a ſmoke to get in, will ſet all on fire when he is in.

* All that I have ſeen relating to the difference between the governour of *Diepe* and Sir *Edward Coke*, is contained in a letter of Secretary *Winwood*'s to my Lord *Buckingham*, dated 29 *June* this year, and in theſe words; Sir *Edward Coke* hath conſigned into the hands of the Lords 2400 *l.* for the ſatisfaction of the *French* Ambaſſador, in the cauſe which concerneth the governour of *Diepe*. *Stephens.*

It

It may pleaſe your Majeſty, now I have ſaid I have done; and as I think I have done a duty not unworthy the firſt year of your laſt high favours, I moſt humbly pray your Majeſty to pardon me, if in any thing I have erred; for my errors ſhall always be ſupplied by obedience; and ſo I conclude with my prayers, for the happy preſervation of your Majeſty's perſon and eſtate.

Your Majeſty's moſt humble, bounden, and moſt devoted ſervant,

Gorhambury, July 25. 1617. FR. BACON, *C. S.*

CLXXIX. To the Earl of BUCKINGHAM.

My very good Lord,

I Do think long to hear from your lordſhip, touching my laſt letter, wherein I gave you my opinion touching your brother's match. As I then ſhewed my diſlike of the matter, ſo the carriage of it here in the manner I diſlike as much. If your lordſhip think it is humour or intereſt in me that leads me, God judge my ſincerity. But I muſt ſay, that in your many noble favours towards me, they ever moved and flowed from your ſelf, and not from any of your friends whatſoever; and therefore in requital give me leave, that my counſels to you again be referred to your happineſs, and not to the deſires of any of your friends. I ſhall ever give you, as I give my maſter, ſafe counſel, and ſuch as time will approve.

I receiv'd yeſterday from Mr. Attorney the Queen's bill, which I ſend your lordſhip. The payment is not out of lands, but out of the cuſtoms, and ſo it can be but the rent. Your lordſhip remembereth, it is but in a caſe which I hope ſhall never be; that is, after his Majeſty's death, if ſhe ſurvive. God ever bleſs and direct you.

Your Lordſhip's moſt faithful and devoted friend and ſervant,

Gorhambury, July 25. 1617. FR. BACON, *C. S.*

CLXXX. To the KING.

It may pleaſe your moſt excellent Majeſty,

I DARE not preſume any more to reply upon your Majeſty, but I reſerve my defence till I attend your Majeſty at your happy return; when I hope verily to approve my ſelf, not only a true ſervant to your Majeſty, but a true friend to my Lord of *Buckingham*; and for the times alſo, I hope to give your Majeſty a good account, though diſtance of place may obſcure them. But there is one part of your Majeſty's letter that I would be ſorry to take time to anſwer; which is, that your Majeſty conceiveth, that whereas I wrote that the height of my Lord's fortune might make him ſecure, I meant that he was turned proud, or unknowing of himſelf; ſurely the opinion which I have ever had of my Lord (whereof your Majeſty is beſt witneſs) is far from that. But my meaning was plain and ſimple, that his lordſhip might, through his great fortune, be the leſs apt to caſt and foreſee the unfaithfulneſs of friends, and malignity of enemies, and accidents of times. Which is a judgment (as your Majeſty knoweth better than I) that the beſt authors make of the beſt, and beſt tempered ſpirits, *ut ſunt res humanæ*; inſomuch as *Guicciardine* maketh the ſame judgment (not of a particular perſon) but of the wiſeſt ſtate of *Europe*, the ſenate of *Venice*, at one time; when he ſaith their proſperity had made them ſecure, and underweighers of perils. Therefore I beſeech your Majeſty to deliver me in this from any the leaſt imputation upon my dear and noble lord

lord and friend. And ſo expecting that that ſun which when it went from us left us cold weather, and now it is returned towards us hath brought with it a bleſſed harveſt; will, when it cometh to us, diſperſe all miſts and miſtakings.. I ever reſt

Your Majeſty's moſt humble, bounden and faithful ſervant,

Gorhambury, this 31 of *Aug.* 1617. FR. BACON, *C. S.*

CLXXXI. To the Earl of BUCKINGHAM.

My very good Lord,

SINCE my laſt to your Lordſhip, I did firſt ſend for Mr. Attorney-General, and made him know, that ſince I heard from court, I was reſolved to further the match and the conditions thereof for your lordſhip's brother's advancement the beſt I could. I did ſend alſo to my Lady *Hatton* and ſome other ſpecial friends, to let them know, I would in any thing declare my ſelf for the match; which I did, to the end that if they had any apprehenſion of my aſſiſtance, they might not be diſcouraged in it. I ſent alſo to Sir *John Butler*, and after by letter to my lady your mother, to tender my performance of any good office towards the match or the advancement from the mother. This was all I could think of for the preſent.

I did ever foreſee, that this alliance would go near to loſe me your lordſhip that I hold ſo dear; and that was the only reſpect particular to myſelf that moved me to be as I was, till I heard from you. But I will rely upon your conſtancy and nature and my own deſerving, and the firm tye we have in reſpect of the King's ſervice.

IN the mean time I muſt a little complain to your Lordſhip, that I do hear my lady your mother, and your brother Sir *John* do ſpeak of me with ſome bitterneſs and neglect. I muſt bear with the one as a lady, and the other as a lover, and with both for your lordſhip's ſake, whom I will make judge of any thing they ſhall have againſt me. But I hope, tho' I be a true ſervant to your lordſhip, you will not have me to be a vaſſal to their paſſions, ſpecially as long as they are governed by Sir *Edward Coke* and Secretary *Winwood*, the latter of which I take to be the worſt; for Sir *Edward Coke*, I think, is more modeſt and diſcreet: Therefore your lordſhip ſhall do me right; and yet I ſhall take it for favour, if you ſignify to them, that you have received ſatisfaction from me, and would have them uſe me friendly and in good manner. God keep us from theſe long journeys and abſence, which make miſunderſtandings and give advantage to untruth, and God ever proſper and preſerve your lordſhip.

Your Lordſhip's true and devoted friend and ſervant,

Gorhambury, Aug. 23. 1617. FR. BACON, *C. S.*

From the Original.

CLXXXII. A Memorial for your Majeſty. *

ALTHOUGH I doubt not but your Majeſty's own memory and care of your affairs, will put you in mind of all things convenient, againſt you ſhall meet with your council, yet ſome particulars I thought it not unfit to repreſent unto your Majeſty; becauſe they paſſed the labour of your council.

I. SOME

I. Some time before your departure, here was delivered unto you by the officers of your exchequer, a computation of your revenue and expence, wherein was expreſſed that your revenue ordinary, was not only equal to your expence, but did ſomewhat exceed it, though not much.

In this point, becauſe the half year will now be expired at *Michaelmas*, it ſhall be fit, that your Majeſty call to account, whether that equality hath held for this half year; and if not, what the cauſes have been, and whether the courſe preſcribed hath been kept, that the ordinary expence hath been borne out of the ordinary revenue, and the extraordinary only out of ſuch money as hath come in by extraordinary means, or elſe your eſtate cannot clearly appear.

II. To maintain this equality, and to cauſe your Majeſty's ſtate to ſubſiſt in ſome reaſonable manner till farther ſupply might be had, it was found to be neceſſary that 200,000 *l.* of your Majeſty's moſt pregnant and preſſing debts ſhould be diſcharged; and after conſideration of the means how to do that, two ways were reſolved on. One that 100,000 *l.* ſhould be diſcharged to the Farmers of your cuſtoms by 25,000 *l.* yearly, they having for their ſecurity power to defalke ſo much of their rent in their own hands: But becauſe if that ſhould be defalked, then your ordinary ſhould want of ſo much, it was agreed that the Farmers ſhould be paid the 25,000 *l.* yearly in the ſale of woods.

In this point it is fit for your Majeſty to be informed what hath been done, and whether order hath been taken with the Farmers for it, and what debts were aſſigned to them ſo to diſcharge; for of the particulars of that courſe I never heard yet.

And becauſe it is apparent that the woodfalls this year do not amount to half that ſum of 25,000 *l.* your Majeſty is to give charge that conſideration be had how the ſame ſhall be ſupplied by ſome other extraordinary for the preſent year, or elſe here will follow a fracture of the whole aſſignments.

Item, Your Majeſty may pleaſe to call for information how that money raiſed upon the woods is imployed, ſo much as is already received, and to be wary that no part hereof be ſuffered to go for extraordinaries, but to be imployed only for the uſe for which it is aſſigned, or elſe a greater rupture will follow in your aſſignments.

Item, A ſpecial conſideration is to be had what courſe ſhall be taken for the reſt of the years with the wood ſales for ſupply of this 25,000 *l.* yearly.

III. The other hundred thouſand pound was agreed to be borrowed, and an allotment made by my Lords of the Council at the table, how the ſame ſhould be imployed, and for what ſpecial ſervices, whereof I deliver to your Majeſty herewith a copy.

In which point it may pleaſe your Majeſty to cauſe your ſelf to be informed how that allotment hath been obſerved, and becauſe it is likely that a good part of it hath gone towards the charges of this your journey to *Scotland*, (at leaſt ſo it is paid) your Majeſty is to call for the particulars of that charge, that you may ſee how much of that hundred thouſand it taketh up.

And then conſideration is to be had how it may be ſupplied with ſome extraordinary comings in, as namely the moneys to come from the Merchant Adventurers, that the ſame be allotted to none other uſe, but to perform

this allotment, that ſo the foundation laid may be maintained, or elſe all will be to ſeek; and if there be any other extraordinary means, to come to your Majeſty that they may be reſerved to that uſe.

And becauſe care muſt be had to keep your credit in *London*, for this money borrowed, your Majeſty may pleaſe to call for information what is done in the matter of the foreſts, and what ſum, and in what reaſonable time, is like to be made thereof.

The Extraordinaries which it is like will be alledged for this year.

Your Majeſty's journey into *Scotland*.

The Lord *Hay*'s imployment into *France*.

The Lord *Roos* into *Spain*.

The Baron *de Tour* extraordinary from *France*.

Sir *John Bennet* to the *Archduke*.

The enlarging of your park at *Theobalds*.

Sir *John Digby*'s ſending into *Spain*.

Of all which when your Majeſty hath ſeen an eſtimate what they amount unto, and what money hath been already delivered towards them, which I fear will fall to be out of the moneys borrowed at *London*; then is it to be conſidered what extraordinaries are any ways to come in, which may ſupply theſe extraordinaries laid out, and be imployed for the uſes for which the moneys borrowed were intended.

CLXXXIII. To the Earl of Buckingham.

My ever beſt Lord, now better than yourſelf,

Your lordſhip's pen or rather pencil hath pourtrayed towards me ſuch magnanimity and nobleneſs and true kindneſs, as methinketh I ſee the image of ſome ancient virtue, and not any thing of theſe times. It is the line of my life, and not the lines of my letter, that muſt expreſs my thankfulneſs: Wherein if I fail, then God fail me, and make me as miſerable as I think myſelf at this time happy by this reviver, through his Majeſty's ſingular clemency, and your incomparable love and favour. God preſerve you, proſper you, and reward you for your kindneſs to

Your raiſed and infinitely obliged friend and ſervant,

Sept. 22. 1617. Fr. Bacon, *C. S.*

CLXXXIV. To the Earl of Buckingham.

My very good Lord,

I Send your lordſhip the certificate touching the inrollment of prentices. We can find no ground for it by law. Myſelf ſhall ever be ready to further things that your lordſhip commendeth; but where the matter will not bear it, your lordſhip, I know, will think not the worſe, but the better of me, if I ſignify the true ſtate of things to your lordſhip; reſting ever

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Octob. 29. 1617. Fr. Bacon, *C. S.*

The

The Certificate.

ACCORDING to his Majeſty's command ſignified by your lordſhip's letters, we have adviſedly conſider'd of the petition touching the inrollment of apprentices indentures, and heard the petitioners counſel, and do find as followeth:

1. THAT the act of parliament 5 *Eliz.* doth not warrant the erecting of an office to inroll ſuch indentures in cities, towns corporate, or market towns; but if any ſuch inrollment ſhould be, it muſt be by the officers there, who are aſſigned to perform ſundry other things touching apprentices and ſervants.

2. THAT in country villages (for which the ſuit carries moſt colour) we cannot give the ſuitors hope, that any profit will be there made, warrantable by law.

THUS we have (according to our duties) certified our opinions of this petition, ſubmitting the ſame nevertheleſs to his Majeſty's great wiſdom; and reſt,

At your Lordſhip's command,

Octob. 25. 1617. *Fr. Bacon*, C. S. *H. Montague*, *Tho. Coventry.*

CLXXXV. To the Earl of BUCKINGHAM.

My very good Lord,

THE liking which his Majeſty hath of our proceeding concerning his houſhold, telleth me that his Majeſty cannot but diſlike the declining and tergiverſation of the inferior officers; which by this time he underſtandeth.

THERE be but four kinds of retrenchments. 1. The union of tables. 2. The putting down of tables. 3. The abatement of diſhes to tables. 4. The cutting off new diets and allowance lately raiſed; and yet perhaps ſuch as are more neceſſary than ſome of the old.

IN my opinion, the firſt is the beſt and moſt feaſible. The Lord Chamberlain's table is the principal table of ſtate. The Lord Steward's table, I think, is much frequented by *Scotiſh* gentlemen. Your Lordſhip's table hath a great attendance; and the Groom of the Stole's table is much reſorted to by the bedchamber. Theſe would not be touched. But for the reſt, (his Majeſty's caſe conſider'd) I think they may well be united into one.

THESE things are out of my element, but my care runneth where the King's ſtate moſt laboureth: * Sir *Lionel Cranfield* is yet ſick, for which I am very ſorry; for methinks his Majeſty, upon theſe toſſings over of his buſineſs from one to others, hath an apt occaſion to go on with ſubcommittees. God ever preſerve and proſper you.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Nov. 19. 1617. FR. BACON, *C. S.*

* Sir *Lionel Cranfield* was a man of ſo much note in theſe times, and ſo often named in theſe papers, that I cannot omit taking ſome notice of his good and bad fortunes. He was bred a merchant, yet by his great abilities in, and application to buſineſs, and the relation he had to my Lord of *Buckingham* by marriage, he was raiſed to be Maſter of the Court of Requeſts, then of the Wardrobe, and after of the Court of Wards, created Lord *Cranfield*, and Earl of *Middleſex*: miſſing the Lord Keeper's place, he was conſtituted Lord High Treaſurer, which being an office he underſtood as well as any; we may conclude his integrity fell ſhort of his ability, from the ſevere judgment given againſt him by the houſe of Lords in 1624. *Stephens.*

From the Original.

CLXXXVI. To the Lord Keeper.*

My Honourable Lord,

HIS Majeſty commandeth me to write to your lordſhip, that he wonders your hand being at that letter of the Lords of the Council, which he ſaith is a very blunt one, you have not beſides ſent him ſome advice of your own, his Majeſty having only intruſted you to ſpeak with Sir *Lionel Cranfield* about his eſtate.

Your Lordſhip's faithful friend and ſervant,

Newmarket, 19 *Nov.* 1617. G. BUCKINGHAM.

CLXXXVII. To the Earl of BUCKINGHAM.

My very good Lord,

YESTERDAY at afternoon were read at the table his Majeſty's † two letters, written with his own hand, the matter worthy the hand. For they were written *ex arte imperandi*, if I can judge; and I hope they and the like will diſinchant us of the opinion, which yet ſticks with us; that to-day will be as yeſterday, and to-morrow as to-day, ſo as there will be (as he ſaith) *Acribus initiis, ſine incurioſo.*

I HOLD my opinion given in my former letter, that the uniting of ſome tables is the moſt paſſable way. But that is not all: For when that is done, the King may ſave greatly in that which remaineth. For if it be ſet down, what tables ſhall be fixed, and what diet allowed to them, my ſteward (as ill a *Meſnager* as I am) or my Lord Mayor's ſteward can go near to tell, what charge will go near to maintain the proportion. Then add to that ſome large allowance for waſte, (becauſe the King ſhall not loſe his prerogative to be deceived more than other men) and yet no queſtion there will be a

† One of theſe letters of K. *James*, as it contains a ſpecimen of the frugality and good oeconomy of his court, and relates to the ſubject we are upon, I have borrowed from the Cabala, p. 258. in terms following.

A letter read at the council-board 21 Nov. 1617. *touching the abatement of his Majeſty's houſhold charge.*

My Lords:

NO worldly thing is ſo precious as time: ye know what taſk I gave you to work upon, during my abſence; and what time was limited unto you, for the performance thereof. This ſame Chancellor of *Scotland* was wont to tell me twenty four years ago, that my houſe could not be kept upon *epigrams*; long diſcourſes and fair tales will never repair my eſtate. *Omnis virtus in actione conſiſtit.* Remember, that I told you, the ſhoe muſt be made for the foot, and let that be the ſquare of all your proceeding in this buſineſs. Abate ſuperfluities in all things; and multitudes of unneceſſary officers, wherever they be placed. But for the houſhold, wardrobe, and penſions, cut and carve as many as may agree with the poſſibility of my means. Exceed not your own rule of 50,000 *l.* for the houſhold. If you can make it leſs, I will account it for good ſervice. And that you may ſee I will not ſpare mine own perſon, I have ſent, with this bearer, a note of the ſuperfluous charges concerning my mouth, having had the happy opportunities of this meſſenger, in an errand ſo nearly concerning his place. In this I expect no anſwer in word or writing, but only the real performance, for a beginning to relieve me out of my miſeries. For now the ball is at your feet, and the world ſhall bear me witneſs, that I have put you fairly to it; and ſo praying God to bleſs your labours, I bid you heartily farewel.

Your own,

JAMES R.

Mr. *Stephens* ſays, In the other I ſuppoſe his Majeſty apprehends that the vigor the council at firſt ſhew'd in reducing the charge of his houſhold, would not be of long continuance: It being obſerv'd by *Tacitus*, in the words here cited, to be a thing not unuſual in publick affairs, that violent beginnings had negligent concluſions.

great retrenchment. But againſt this laſt abatement will be fronted the payment of arrears. But I confeſs I would be glad that I might ſee, or rather, that a parliament may ſee, and chiefly that the King (for his own quiet) may ſee, that upon ſuch a ſum paid, ſuch an annual retrenchment will follow: For things will never be done in act, except they be firſt done in conceit.

I KNOW theſe things do not pertain to me; for my part is to acquit the King's office towards God by adminiſtration of juſtice, and to oblige the hearts of his people to him by the ſame, and to maintain his prerogative. But yet becauſe it is *in hoc*, that the King's caſe laboureth, I cannot but yield my care and my ſtrength too in council, ſuch as it is; which cannot be ſo much as it was between our *Lady-day* and *Michaelmas* laſt. But whatſoever it is, it is wholly his Majeſty's, without any deflexion.

As ſoon as I find any poſſibility of health in Sir *Lionel Cranfield*, to execute a ſub-commiſſion, I will by conference with him frame a draught of a letter from his Majeſty, for which there is the faireſt occaſion in the world. And the King hath prepared it as well as poſſible. God ever preſerve and proſper you.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Nov. 22. 1617. FR. BACON, *C. S.*

From the Original.

CLXXXVIII. To the Earl of BUCKINGHAM.*

My Lord,

HOW well I wiſh to Sir *Gilbert Haughton*, himſelf I dare ſay doth not doubt, partly out of mine own affection, and chiefly for your lordſhip's affection towards him, which to me is more than mine own. That the King ſhould make bargains of hope, when his treaſure ſufficeth not for his own charge, I may not adviſe for my deareſt friends; for I am nailed to the King's eſtate. But two things I ſhall aſſent unto; the one, that if the King can redeem his works without charge of officers, I ſhall be glad of it, both for the gentleman's ſake, and becauſe I perceive the uniting of the allom-works in the King's hand is beſt; the other, that if his Majeſty be pleaſed to ſignify his pleaſure to my Lord Treaſurer and me, that there be no forfeiture taken by *Baniſter* till the King ſhall adviſe of this bargain, we will hold him to it. God preſerve and proſper your lordſhip; your lordſhip I think perceiveth both by ſcribling and curſory inditing, that I write in ſtraights of buſineſs.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, this 24th of *Nov.* 1617. FR. BACON, *C. S.*

CLXXXIX. To the Earl of BUCKINGHAM.

My very good Lord,

I SEND your lordſhip a draught of a letter touching the ſub-commiſſion, written in wide lines, becauſe it may be the better amended by his Majeſty. I think it is ſo penn'd as none can except to it, no nor imagine any thing of it. For the houſhold-buſineſs there was given a fortnight's day: for the penſions, the courſe which I firſt propounded of abating of a third throughout, and ſome wholly ſeemeth well enter'd into. Theſe be no ill

beginnings. But this courſe of the ſub-commiſſion threds all the King's buſineſs. God ever preſerve and proſper you.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Nov. 27. 1617. FR. BACON, *C. S.*

SIR *Lionel Cranfield* is now reaſonably well recover'd.

Draught of the Sub-commiſſion.

My Lords,

IN this firſt and greateſt branch of our charge concerning our houſe, we do find what difficulties are made, and what time is loſt, in diſputing of and deviſing upon the manner of doing it; whereof the matter muſt be, and is ſo fully reſolved. Neither can we but ſee in this, as in a glaſs, the like event to follow in the reſt upon like reaſon. For the inferior officers in every kind, who are beſt able for ſkill to propound the retrenchments, will out of intereſt or fearfulneſs make dainty to do ſervice; and that which is done with an ill-will, will never be well done. Again, to make it the act of the whole table, for the particular propoſitions and reckonings, will be too tedious for you, and will draw the buſineſs it ſelf into length; and to make any particular committees of your ſelves, were to impoſe that upon a few, which requireth to be carried indifferently as the act of you all. For ſince the great officers themſelves think it too heavy for them, as our ſtate now is, to deal in it, without bringing it to the table; with much more reaſon may any particular perſons of you be loth to meddle in it, but at the board. In all which reſpects we have thought fit, (neither do we ſee any other way) that you ſend unto us the names of the officers of our exchequer, and our cuſtom-houſe, and auditors, out of which we will make choice of ſome few, beſt qualified to be ſub-committees, for the better eaſe, and the ſpeeding of the buſineſs by their continual travails and meetings; whoſe part and employment we incline to be to attend the principal officers in their ſeveral charges, and join themſelves to ſome of the inferior officers, and ſo take upon them the mechanick and laborious part of every buſineſs, thereby to facilitate and prepare it for your conſultations, according to the directions and inſtructions they ſhall receive from you from time to time.

From the Original.

CXC. To the KING.*

May it pleaſe your Majeſty,

BEING yeſterday aſſembled in council to proceed in the courſe we had begun for retrenchment of your Majeſty's expences; we received your princely letters, whereby we are directed to ſend to your Majeſty the names of the officers of the exchequer, cuſtom-houſe and auditors, out of which you purpoſe to make choice of ſome to be ſubcommitted to handle the mechanick and laborious part of that which your Majeſty had appointed to our care; we have according to our duty ſent unto your Majeſty the names of the ſeveral officers of your Majeſty in thoſe places, to be ordered as your wiſdom ſhall think beſt to direct. But withal, we thought it appertenant

pertenant to our duties to inform your Majeſty how far we have proceeded in the ſeveral heads of retrenchments by your Majeſty at your departure committed unto us, that when you know in what eſtate our labours are, your judgment may the better direct any further courſe as ſhall be meet.

The matter of the houſhold, was by us ſome days ſince, committed peremptorily to the officers of the houſe, as matter of commandment from your Majeſty, and of duty in them, to reduce the expence of your houſe to a limited charge of fifty thouſand pounds by the year, beſides the benefit of the compoſitions: and they have ever ſithence painfully (as we are informed) travailed in it, and will be ready on *Sunday* next, which was the day given them, to preſent ſome models of retrenchments of divers kinds, all aiming at your Majeſty's ſervice.

In the point of penſions we have made a beginning, by ſuſpending ſome wholly for a time, and of others of a third part; in which courſe we are ſtill going on, until we make it fit to be preſented to your Majeſty; in like manner the Lord Chamberlain, and the Lord *Hay* did yeſterday report unto us, what their travail had ordered in the wardrobe: and althongh ſome doubt did ariſe unto us whether your Majeſty's letters intended a ſtay of our labours, until you had made choice of the ſubcommittee intended by you; yet preſuming that ſuch a courſe by ſubcommittee was purpoſed rather for a furtherance, than lett to that work, we did reſolve to go on ſtill till your Majeſty's further directions ſhall come unto us; and then according to our duty we will proceed, as we ſhall be by your Majeſty commanded. In the mean time, we thought it our duty to inform your Majeſty of what we have done, that neither your Majeſty may conceive that we have been negligent in thoſe things which were committed unto us, nor your directions by your late letters hinder or caſt back that, which is already ſo far proceeded in. And ſo humbly kiſſing your royal hands, and praying to the Almighty for your long and happy reign over us, we reſt,

Your Majeſty's moſt humble and obedient ſubjects and ſervants,

5 Dec. 1617.

G. Cant.	Lenox.	Pembroke.
E. Worceſter.	W. Wallingford.	L. Elien.
T. Arundel.	James Hay.	T. Edmonds.
E. Wotton.	Jul. Cæſar.	Edw. Coke.
T. Lake.	T. Suffolk.	C. Edmonds.

Fr. Bacon, *C. S.*

From the Original.

CXCI. To the Marquis of Buckingham.*

My very good Lord,

I Write now only, rather in a kind of continuance and freſh ſuit, upon the King's buſineſs, than that the ſame is yet ripe, either for advertiſement or advice.

The ſubcommiſſioners meet forenoon and afternoon, with great diligence, and without diſtraction or running ſeveral ways, which if it be no more than neceſſary, what would leſs have done? that is, if there had been no ſubcommiſſioners, or they not well choſen?

I speak with Sir *Lionel Cranfield*, as cauſe requireth either for account or direction, and as far as I can, by the taſte I have from him, diſcern, probably their ſervice will attain, and may exceed his Majeſty's expectation.

I do well like the courſe they take, which is in every kind to ſet down (as in beer, in wine, in beef, in muttons, in corn, *&c.*) what cometh to the King's uſe, and then what is ſpent, and laſtly what may be ſaved. This way though it be not ſo accuſative, yet it is demonſtrative. *Nam rectum eſt index ſui & obliqui;* and the falſe manner of accompting, and where the gain cleaveth, will appear after by conſequence. I humbly pray his Majeſty to pardon me for troubling him with theſe imperfect glances, which I do, both becauſe I know his Majeſty thinketh long to underſtand ſomewhat, and leſt his Majeſty ſhould conceive, that he multiplying honours and favours upon me, I ſhould not alſo increaſe and redouble my endeavours and cares for his ſervice. God ever bleſs, preſerve and proſper his Majeſty and your lordſhip, to whom I ever remain,

Your true friend and moſt devoted ſervant,

16 Jan. 1617. FR. BACON, *C. S.*

CXCII. To Mr. MATTHEWS, about reading and giving judgment upon his writings.

SIR,

BECAUSE you ſhall not loſe your labour this afternoon, which now I muſt needs ſpend with * my Lord Chancellor, I ſend my deſire to you in this letter, that you will take care not to leave the writing, which I left with you laſt, with any man, ſo long, as that he may be able to take a copy of it; becauſe, firſt, it muſt be cenſured by you, and then conſidered again by me. The thing which I expect moſt from you is, that you would read it carefully over by your ſelf, and to make ſome little note in writing, where you think (to ſpeak like a critick) that I do perhaps *indormiſcere*, or where I do *indulgere genio*; or where, in fine, I give any manner of diſadvantage to my ſelf. This, *ſuper totam materiam*, you muſt not fail to note; beſides, all ſuch words and phraſes as you cannot like; for you know in how high account I have your judgment.

* This ſeems to be ſpoken pleaſantly of himſelf, and to refer to *Jan.* 15. 161⅞. on which day the Lord *Verulam* was by ſpecial warrant made Lord Chancellor. *Rymer* XVII p. 55. and at which time probably ſome affairs that required privacy and retirement might occur.

CXCIII. To the Marquis of BUCKINGHAM.

My very good Lord,

I THOUGHT fit by this my private letter to your lordſhip, to give you an account of ſuch buſineſs as your lordſhip hath recommended unto me, that you may perceive that I have taken that care of them I ought, and ever ſhall in thoſe things you recommend or remit to me.

FOR the ſuit of the alehouſes which concerneth your brother Mr. *Chriſtopher Villiers*, and Mr. *Patrick Mawl*, I have conferr'd with my Lord Chief Juſtice, and Mr. Sollicitor thereupon, and there is a ſcruple in it, that it ſhould be one of the grievances put down in parliament; which if it be, I may not in my duty and love to you adviſe you to deal in it; if it be not, I will mould it in the beſt manner and help it forward. The ſtay is upon the ſearch of the clerk of the parliament, who is out of town; but we have already found, that the laſt grievance *in ſeptimo*, is not the ſame with this ſuit; but we doubt yet of another *in tertio*.

FOR

For the buſineſs of Mr. *Leviſton*, for your lordſhip's ſake (who I perceive keeps your noble courſe with me, in acquainting me with theſe things) I ſhall apply my ſelf unto you; though in my nature I do deſire that thoſe that ſerve in the court where I ſit, though they be not in places of my gift, and ſo concerns not me nor my place in profit; yet I wiſh, I ſay, I might leave them in as good caſe as I find them. And this ſuit concerneth the main profit of the ſix clerks; who though they be of the maſter of the rolls his gift, yet they ſerve in my court. But my greateſt doubt is, that the grant cannot be good in law; and that it is not like thoſe other precedents, whereof I have receiv'd a note. For the difference is, where things have been written by all the clerks indifferently and looſely, (in which caſe the King may draw them into an office,) and where they have appertained to one eſpecial office; in which caſe the King can no more take away the profits of a man's office, than he can the profits of his land. Therefore I think your lordſhip may do well to write to * Mr. Sollicitor and Serjeant † *Finch*, or ſome other lawyers that you truſt, or ſuch as Mr. *Leviſton* truſteth, being perſons of account, to inform you of the point in law, before you proceed any farther: for without that all is in vain.

* Sir *Tho. Coventry.*

For the buſineſs of *Hawkins* touching the regiſter for the commiſſion of bankrupts; I am not yet ſatisfied likewiſe for the law, nor for the convenience: but I rather incline to think it may paſs, and I have ſet it in a courſe by which it may be throughly informed.

For Sir *Rowland Egerton*'s cauſe, and his lady's, the parties have ſubmitted themſelves unto me, and are content to do it by bond; and therefore I will undoubtedly make an end of it according to juſtice and conſcience.

For Sir *Gilbert Houghton*'s buſineſs, I am in very good hope to effect your lordſhip's deſire for his good.

For *Moor*'s buſineſs, concerning the printing of books, after hearing all parties, I have ſealed his patent; but for his former patent of ſalt I dare not do it, without acquainting the council therewith, which I am ready to do, if he require that courſe to be taken.

If his Majeſty at any time aſk touching the Lord *Clifton*'s buſineſs, I pray your lordſhip repreſent to his Majeſty thus much: that whatſoever hath paſſed, I thank God I neither fear him nor hate him; but I am wonderful careful of the ſeat of juſtice, that they may ſtill be well munited, being principal ſinews of his Majeſty's authority. Therefore the courſe will be (as I am adviſed) that for this heinous miſpriſion (that the party without all colour or ſhadow of cauſe, ſhould threaten the life of his judge, and of the higheſt judge of the kingdom next his Majeſty) he be firſt examin'd, and if he confeſs it, then an *ore tenus*; if he confeſs it not, then an information in the ſtar-chamber, and he to remain where he is till the hearing. But I do purpoſely forbear yet to have him examin'd, till the decree or agreement between him and my Lord *Aubigny* (which is now ready) be perfected, leſt it ſhould ſeem an oppreſſion, by the terrour of the one, to beat him down in the other. Thus I ever reſt,

Your Lordſhip's true friend, and devoted ſervant,

FR. BACON, *Canc.*

York-houſe, Jan. 25. 1617.

† Sir *Henry Finch* Serjeant at law, being the firſt of his name that made a conſiderable figure in that profeſſion, I ſhall give a ſhort account of him. He was younger brother to Sir *Moyle Finch* of *Eaſtwel* in the county of *Kent*, and father of *John* Lord *Finch*, Keeper of the Great Seal in the reign of King *Charles* I. He died in 1625, leaving to poſterity a ſufficient teſtimony of his learning in the law, as well as the ſciences, in his book intitled, A deſcription of the common laws of *England* according to the rules of art, *&c.* His ſon's good parts and elocution were acknowledged by the greateſt of his enemies; which accompliſhments, though he died without iſſue, have eminently appear'd in ſome other deſcendants from his honourable family. *Stephens.*

I pray your lordſhip to pardon me, if in reſpect of a little watering in one of mine eyes, I have written this letter, being long and private buſineſs, in my ſecretary's hand.

From the Original.

CXCIV. To the Lord Chancellor. *

My honourable Lord,

I HAVE received your lordſhip's letters, wherein I ſee the continuance of your love and reſpect to me, in any thing I write to you of, for which I give your lordſhip many thanks, deſiring nothing for any man but what you ſhall find juſt and convenient to paſs; I am very glad to underſtand that there is ſo good hope of Sir *Gilbert Houghton*'s buſineſs, which I muſt needs aſcribe to your lordſhip's great favour toward him for my ſake, which I will ever acknowledge. If his Majeſty at any time ſpeak of the Lord *Clifton*'s buſineſs, I will anſwer according to that your lordſhip hath written, *&c.*

Your Lordſhip's faithful ſervant,

Newmarket, the laſt of *Jan.* 1617. G. BUCKINGHAM.

CXCV. To the K I N G.

It may pleaſe your moſt excellent Majeſty,

FINDING as well by your Majeſty's diſpatches and directions to your council, as now by ſpeech with Mr. Secretary *Lake*, that your Majeſty is content to be troubled with buſineſs of ſundry natures; I thought good, according to the duty of my place, and the neceſſity of the occaſion, to put your Majeſty in mind, that on this day ſeven-night, being *Friday* in the morning, I am, according to cuſtom, to give a charge and admonition to the judges and juſtices of peace now before the circuits, wherein I am humbly to crave your Majeſty's pleaſure and directions.

I have for your Majeſty's better eaſe ſet down the heads, which by the preſcript of your book, and out of the conſideration of the preſent times, I have thought fitteſt to be remembered. I have alſo ſent your Majeſty the laſt account of the judges circuits, not to trouble you with the reading of them all; but to the end that if upon my memorial, or otherwiſe out of your Majeſty's own memory, which is above memorials, you ſhould have occaſion to reſort to thoſe accounts, the papers may be by you.

THE point of greateſt weight, in my opinion, is the carrying of a balanc'd hand at this time in the matter of recuſants, in regard of the treaty with *Spain*. For it were good, in reſpect of your people, that there were no note made, that the ſtring is relaxed, and in reſpect of the treaty, that it is not ſtrained; and therefore that the proceeding in thoſe cauſes be rather diligent than ſevere.

I am wonderful glad to hear that this extremity of weather, which I think the *Muſcovite* hath brought with him, hath not touched your Majeſty, whoſe health and caſe is far dearer to me than my life with all the appurtenances. God ever preſerve and proſper you.

Your Majeſty's moſt faithful and moſt obliged ſervant,

Friday morning, *Feb.* 6. 1617. FR. BACON, *Canc.*

YOUR Majeſty will be pleaſed your anſwer be with me on *Thurſday* at noon, or ſoon after.

From

From the Original.

CXCVI. To the Lord Chancellor. *

My honourable Lord,

I HAVE acquainted his Majeſty with your letter to me, and delivered likewiſe to him the letter and other things directed to his Majeſty, who hath commanded me to return this anſwer to them all.

FIRST, For your memorial of your Charge to the judges, he liketh it ſo well, that he findeth nothing either to be added or diminiſhed, and was ſo well ſatisfied therewith, that he accounteth it needleſs to read the other papers, but ſealed them up again, and ſendeth them back to your lordſhip without reading them. Only in the point of recuſants his Majeſty is of the quite contrary opinion to you; for though he would not by any means have a more ſevere courſe held, than his laws appoint in that caſe, yet ſith the many reaſons why, there ſhould be no mitigation above that which his laws have enacted, and his own conſcience telleth him to be fit. As firſt, the Papiſts in his kingdom have taken ſuch heart upon the commiſſion given to Sir *John Digby* touching the match with *Spain*, that they have ſent copies thereof privately up and down, and are ſo lifted up in their hopes of what they deſire, that his Majeſty cannot but take a more ſevere courſe (as far as by his laws he may) than hitherto he hath done. Beſides, when they ſhall ſee a harder hand carried toward them than hath been accuſtomed, his Majeſty aſſureth himſelf they will employ all their means to further the match, in hope of mitigating of that ſeverity when it ſhall be accompliſhed. And though theſe reaſons were not, his Majeſty would account it a baſeneſs in a Prince to ſhew ſuch a deſire of the match, as to ſlack any thing in his courſe of government, much more in propagation of the religion he profeſſeth, for fear of giving hindrance to the match thereby. And ſo with many thanks for your favours to my brother in his buſineſs, I reſt,

Your Lordſhip's faithful ſervant,

Newmarket, 8 Feb. 1617. G. BUCKINGHAM.

CXCVII. To the Marquis of BUCKINGHAM.

My very good Lord,

MR. CHANCELLOR of the exchequer hath ſignified to me this day, that yeſterday his Majeſty called him to his coach, and ſaid to him, that one that had uſed ill ſpeech of me ſhould be called before me, and make his ſubmiſſion to me; and thereupon be called before the council, and receive a ſharp reprehenſion, and ſo be inlarged. And Mr. Chancellor could not tell me who the perſon was, but after by ſome letter he received from my Lord *Clifton*, and ſpeech with a man of his, he perceived it was he.

I pray your lordſhip in humbleneſs to let his Majeſty know, that I little fear the Lord *Clifton*, but I much fear the example, that it will animate ruffians and *rodomonti* extremely againſt the ſeats of juſtice, (which are his Majeſty's own ſeats) yea and againſt all authority and greatneſs, if this paſs without publick cenſure and example; it having gone already ſo far as that the perſon of a baron hath been committed to the tower. The puniſhment it may pleaſe his Majeſty to remit, and I ſhall not formally but heartily intercede for him:

him: but an example (ſetting my ſelf aſide) I wiſh for terror of perſons, that may be more dangerous than he, towards the leaſt judge of the kingdom.

THEREFORE it may pleaſe his Majeſty to ſpeak of it with my ſelf and my lords, when he cometh next, and in the mean time I will command from his Majeſty, the Maſter of the Rolls, and Mr. Attorney, who were appointed by the table to examine him, to ſtay. God ever proſper you. †

Your Lordſhip's true friend and devoted ſervant,

March 17. 1617. FR. BACON, *Canc.*

† I know not whether there was any proſecution againſt the Lord *Clifton*, or whether it was prevented by the laying of violent hands upon himſelf, in the year enſuing. *Stephens.*

From the Original.

CXCVIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

WE have ſat once upon the commiſſion of Treaſure to no ill purpoſe, as may appear by the account incloſed; wherein his Majeſty will find no prepoſterous iſſue of treaſure: Mr. Chancellor imagines well, *Coke* ſeeks and beats over, as well where it is not, as where it is; Secretary *Naunton* forgets nothing. I will look to bow things to the true ends. God bleſs and proſper his Majeſty and your ſelf.

Your Lordſhip's moſt obliged friend and faithful ſervant,

25 *July* 1617. FR. VERULAM, *Canc.*

CXCIX. To the Marquis of BUCKINGHAM.

My very good Lord,

I PRAY your lordſhip to ſignify to his Majeſty, that I thought it my duty to ſtay at the ſeal, a book of Sir *Francis Steward's*, and Sir *James Auterlony*, *&c.* of 200 *l.* land in charge in fee-ſimple: my reaſons,

FIRST, It is a perpetuity, and ſo much rent in diminution of revenue certain.

SECONDLY, The warrant (as is acknowledg'd) came only from my Lord of *Suffolk*, and not from Mr. Chancellor. And yet my lord was wont to boaſt, that ſince he was treaſurer, all commiſſions and contracts for ſale of King's land were broken off and ceaſed.

THIRDLY, The rate of the monies paid by the gentlemen, amounteth but to thirteen years purchaſe; which is a plain gift of a good proportion of value.

IF his Majeſty, now informed, iterate his mandate, it is done, and I excuſed; but I could wiſh his Majeſty would refer it to the commiſſioners of the treaſury, how the gentlemen may be otherwiſe ſatisfied.

I received yeſter-night a brave account of the commiſſion of the wards in *Ireland*, which this one year is advanced from 200 *l. per annum* to 4000 *l.* which is twenty fold multiplied. This I write for two reaſons. Firſt, Becauſe I glory in it, becauſe it was my work wholly: Next, becauſe his Majeſty may take occaſion by this to look better to the improvement of his wards in *England* in due time. God ever preſerve and proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

York-houſe, *July* 27. 1618. FR. VERULAM, *Canc.*

CC. To

CC. To the Marquis of BUCKINGHAM.

My very good Lord,

I AM very glad to hear of the honour his Majeſty intendeth to my noble lady your lordſhip's * mother. This, amongſt many other things, ſheweth in your lordſhip good-nature, which is the root of all virtues, next religion. Beſides, it doth ſort well in ſtates, when place and power do meet, and ſtand not too far at diſtance.

FOR the paſſing of it by direction without bill ſigned, it cannot be in law. So is Mr. Attorney's opinion, and ſo is mine; and therefore there is preſently a bill ſent with an indorſement of paſſing it by immediate warrant, and this antedate.

FOR the antedate, I muſt preſent his Majeſty with my caution, and with my obedience. 18 H. VI. cap. 1.

FOR the ſtatute tieth me from antedates; and indeed the miſchief is infinite: for by that means the King may grant any land, *&c.* and take it away a month hence, and grant it another by an antedate. And ſurely were it land or the like, I would not ſay *abſit*, or your Majeſty cannot do it, for a world; or your Majeſty is ſworn and I am ſworn; or ſuch brave phraſes: but ſurely (I ſay) I would in humbleneſs repreſent it to his Majeſty †.

BUT the caſe of honour differeth; for therein his Majeſty's prerogative and declaration is abſolute, and he may make him that is laſt to be firſt. And therefore upon his Majeſty's ſignification of his pleaſure upon the indorſement of the bill ſigned, I take it I may lawfully do it.

I am here rejoicing with my neighbours the towns-men of *St. Albans*, for this happy day the ‡ fifth of *Auguſt*, 1618.

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury. FR. VERULAM, *Canc.*

* The advancement of this Lady to the title of the Counteſs of *Buckingham*, was, notwithſtanding the reaſons here alledged, ſo ill reſented by the houſe of commons in 1626, that in article XI of their impeachment of the Duke her ſon, it was objected againſt him as one of his offences. *Stephens.*

† By this and the preceding letter it appears, that as my Lord Chancellor thought it his duty to offer to the King his reaſons againſt paſſing of a patent; yet if then the King, who was judge of the inconvenience, was pleaſed to command it, he was obliged to allow the ſame. But in thoſe things which were contrary to law, as it is to be preſumed, that after an humble repreſentation thereof, no prince would exact, ſo no miniſter in ſuch a caſe would yield an obedience. *Stephens.*

‡ The fifth of *Auguſt*, being the anniverſary of the King's deliverance from the Earl of *Gowry*'s conſpiracy, was by ſome called the Court-holy-day, and ridiculed as a fiction; tho' the truth thereof being delivered down by Archbiſhop *Spotſwood*, and other good hiſtorians, I ſee no great reaſon to call it into queſtion. *Stephens.*

CCI. To the Marquis of BUCKINGHAM.

My very good Lord,

I THANK your lordſhip for your laſt loving letter. I now write to give the King an account of a patent I have ſtayed at the ſeal. It is of licence to give in mortmain eight hundred pound land, though it be of tenure in chief to † *Allen* that was the player, for an hoſpital.

† That *Allen* the player, who founded an hoſpital at *Dulwich* in *Surrey*, had been an excellent actor of the comical and ſerious part; will appear evident to any one that ſhall throughly conſider the following epigram made by that admirable dramatick Poet *Ben Johnſon*.

To

I like well that *Allen* playeth the laſt act of his life ſo well; but if his Majeſty give way thus to amortize his tenures, his courts of wards will decay; which I had well hoped ſhould improve.

But that which moved me chiefly is, that his Majeſty now lately did abſolutely deny Sir *Henry Savile* for 200 *l.* and Sir *Edward Sandys* for 100 *l.* to the perpetuating of two lectures, the one in *Oxford*, the other in *Cambridge*, foundations of ſingular honour to his Majeſty (the beſt learned of Kings) and of which there is great want; whereas hoſpitals abound, and beggars ‡ abound never a whit the leſs.

If his Majeſty do like to paſs the book at all; yet if he would be pleas'd to abridge the 800 *l.* to 500 *l.* and then give way to the other two books for the univerſity, it were a princely work. And I would make an humble ſuit to the King, and deſire your lordſhip to join in it, that it might be ſo. God ever preſerve and proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

York-houſe, Aug. 18. 1618. Fr. Verulam, *Canc.*

I have written to my Lord Chamberlain, being Chancellor of *Oxford*, to help in the buſineſs.

To Mr. Edward Allen.

If *Rome* ſo great, and in her wiſeſt age,
Fear'd not to boaſt the glories of her ſtage:
As ſkilful *Roſcius*, and grave *Æſop*, men
Yet crown'd with honours, as with riches then;
Who had no leſs a trumpet of their name,
Than *Cicero*, whoſe every breath was fame:
How can ſo great example die in me?
That, *Allen*, I ſhould pauſe to publiſh thee;
Who both their graces in thy ſelf haſt more
Outſtript, than they did all that went before:
And preſent worth in all doſt ſo contract
As others ſpeak, but only thou doſt act.
Wear this renown. 'Tis juſt that who did give
So many poets life, by one ſhould live.

‡ It were to be wiſhed this obſervation did not hold true to this day: for tho' the foundations of hoſpitals are to be commended, which Sir *Fr. Bacon* hath done both in this letter, and other his writings; yet it ſhews that ſome more adequate remedy for ſupporting the poor, than what ariſes from theſe charities, or even from the laws enacted for their relief, was then, and yet is to be deſired. And as the defect thereof is no ſmall reproach to the government of a country, happy in its natural product, and enrich'd by commerce; ſo it would be an act of the greateſt humanity, to provide for the poor, and that idleneſs and beggary, the ſucceſſive nurſery of rogues, might as far as poſſible be extirpated. Upon this occaſion I cannot but take notice of a ſtory which has been ſpread abroad to the defamation of Sir *Fr. Bacon* (tho' upon no good ground, as far as I can judge) as if in the accompliſhment of the foundation of the *Chartreux* hoſpital, begun by Mr. *Sutton*, and carried on by his executors, Sir *Francis*, who was then the King's Sollicitor, had, for ſome ill deſigns of gain to himſelf, or others, endeavoured to have defeated the ſame. The fact was, that the heir at law ſuppoſing, notwithſtanding what Mr. *Sutton* had done in procuring acts of parliament, and patents from the King, in order to eſtabliſh this noble charity, that the greateſt part of his eſtate was deſcended to him; as it was argued on his behalf by the Sollicitor-General, by Mr *Henry Yelverton*, and Mr. *Walter*, men of great reputation in thoſe times: And whatever ill intentions ſome of the court might have, my requeſt to the reader is, that before he paſs any cenſure upon Sir *Fr. Bacon* relating, hereunto he would pleaſe to peruſe his advice (printed p. 449. of this Vol.) given to the King touching Mr. *Sutton*'s eſtate. *Stephens.*

From the Original.

CCII. To the Marquis of Buckingham.*

My very good Lord,

What paſſed in your lordſhip's preſence, your lordſhip can tell, touching the navy. The morrow following we concluded in approbation of

of the books, ſave in one point, touching the number convenient for manning the ſhips, wherein the number allowed by the Commiſſioners, had in my judgment a little of the Merchant; for to meaſure by ſo many as were above dead pays, is no good argument. For the abuſe of dead pays is to be amended, and not the neceſſary number abated. In this his Majeſty may fall upon a middle proportion between that of the Commiſſioners and that of the Officers.

It were good, now the three books which we have appointed to be ingroſſed into one leidger-book are affirmed, there were a ſhort book of his Majeſty's royal directions, and orders thereupon, extracted.

For the commiſſion of the Treaſury, I perſuade my ſelf, they are of the firſt hours that have been well ſpent in that kind. We have put thoſe particulars whereof his Majeſty gave us charge into a way.

BINGLEY's information will be to good purpoſe, and we find another of like nature revealed to Mr. Secretary and my ſelf. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

9 *October*, 1618. FR. VERULAM, *Canc.*

CCIII. To the Marquis of BUCKINGHAM.

My very good Lord,

LOOKING for matter of ſervice, I have found out a ſuit for my ſelf; and it is proper for me more than all men, becauſe it is within the account of the hamper. But I have made a law to my ſelf, that I will never beg any thing which ſhall not bring gain to the King. Therefore my ſuit is to farm the profits of the alienations, yielding a thouſand pound a year more to the King than hath been yielded *communibus annis*, by a *medium* of ſeven years. If the King be pleaſed to grant me this, it will a little warm the honour he hath given me; and I ſhall have a new occaſion to be, as I ever have been, and ſhall be,

Your Lordſhip's obliged friend and faithful ſervant,

York-houſe, Octob. 9. 1618. FR. VERULAM, *Canc.*

CCIV. To the Marquis of BUCKINGHAM.

My very good Lord,

THIS morning Mr. Attorney came to me, and deſired of me many writs of *ne exeat regnum* againſt moſt of the *Dutch* merchants *, and withal

* The affair of theſe *Dutch* merchants is in ſome meaſure repreſented in this letter, and thoſe of *Octob.* 9, and *Nov.* 9. 1619. But Mr. *Stephens* in his *Introduction*, p. 45, 46 gives us, by the aſſiſtance of ſome authentick papers, the following account of the affair: Upon the 19th of *Octob.* 1618, the Attorney-General having applied to the Lord Chancellor for writs *ne exeat Regnum*, againſt theſe merchants, afterwards exhibited an *Information* againſt about one hundred and eighty of them, for tranſporting beyond the ſeas vaſt quantities of gold and ſilver in money, plate, and bullion, ſince the beginning of King *James* I's reign. The Attorney at firſt brought the cauſe to an hearing againſt about twenty of them, who were ſuppoſed the greateſt offenders, and moſt able to make reſtitution. Their fines amounting in the whole to 150000 *l.* of which Mr. *William Courteen*, and two others, were condemned in 20000 *l* each; the advice which the Lord Chancellor gave the King, not to grant away the fines of ſuch ten of them as Sir *Thomas Vavaſor* the diſcoverer ſhould chooſe, and which it ſeems he had in a manner been promiſed, was a piece of ſervice worthy the place he enjoy'd, and the truſt he had with the King. Upon the 12th of *Octob.* 1619, Mr. *Courteen* was cenſured to pay 2000 *l.* more, and others, ſmaller ſums, for endeavouring to corrupt the King's evidence. And the 19th of *November* following was appointed for the trial of between twenty and thirty more; but by reaſon of ſome neglect or miſmanagement in the proſecution, which gave the court a great deal of trouble,

withal let me underſtand that there was a diſcovery of an infinite tranſportation of gold and ſilver out of this realm by the ſaid *Dutch* merchants, amounting to millions; and that Sir *John Brittain* had made a book thereof, and preſented the ſame to his Majeſty: and farther, that his Majeſty had directed him to proſecute the ſame; and had alſo given Sir *Thomas Vavaſor* the forfeiture of ſuch ten of them as he ſhould chuſe.

Hereupon I thought it my duty, as in a matter of great weight, to ſignify to his Majeſty by your lordſhip what I conceive.

The diſcovery I think very happy. For if it be true, it will be a great benefit to his Majeſty: it will alſo content his people much, and it will demonſtrate alſo that *Scotland* is not the leech (as ſome diſcourſers ſay) but the *Netherlanders*, that ſuck the realm of treaſure. So that the thing is very good.

But two things I muſt repreſent to his Majeſty; the firſt, that if I ſtay merchants from their trading by this writ, I muſt do it either *ex officio*, or by ſpecial warrant from his Majeſty.

If *ex officio*, then I muſt have more than a bare ſurmiſe to grant the writ upon, ſo as I muſt be acquainted with the grounds, or at leaſt appearance of proofs. If by ſpecial warrant, then I deſire to receive the ſame. The other is, that I humbly beſeech his Majeſty that theſe royal boughs of forfeiture may not be vintaged, or crop'd by private ſuitors (conſidering his Majeſty's ſtate as it is;) but that Sir *Thomas Vavaſor*, or Sir *John Brittain* may have a bountiful and gracious reward for their diſcovery; but not the prime, or without ſtint.

In ſum, I would wiſh his Majeſty to refer the whole buſineſs and carriage of the ſame for his honour and profit to the commiſſioners of treaſury; or becauſe it is a legal forfeiture, to my ſelf, Mr. Chancellor, Sir *Edward Coke*, and my Lord Chief Juſtice of *England:* and by us his Majeſty ſhall be aſſured to know the beſt courſe for his juſtice, honour, and profit, and that he may diſpoſe what bounty he will. God ever preſerve and proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

York-houſe, Octob. 19. 1618. Fr. Verulam, *Canc.*

trouble, and the defendants ſome advantage, the cauſe was not heard till the 7th of *December*, tho' moſt of them were then found guilty. Of the large fines impoſed upon the delinquents, it is ſuppoſed that they paid but a third part; for during the proſecution, the States General did by a letter deſire the Marquis of *Buckingham* to endeavour to moderate the heat thereof, as Sir *Noel Carſon* their Embaſſador did the next day after ſentence, to mitigate the ſeverity.

From the Original.

CCV. To the Lord Chancellor.*

My Lord,

I Have acquainted his Majeſty with your letter, who giveth you thanks for your advice to communicate the buſineſs of the *Dutchmen* to the commiſſioners of the Treaſury, which his Majeſty was before purpoſed to refer to them, as it concerns his treaſure, for the carriage of it; and to your lordſhip and the reſt named in your letter, for the relation it hath to the law. For the propoſers of the ſuit, his Majeſty intendeth only to reward their pains as may ſtand with his ſervice and his princely diſpoſition, but to preſerve the main benefit himſelf: all that his Majeſty would have your lordſhip to do for the preſent, is to take order about the writ of *Ne exeant regnum*; to adviſe with

with his learned counſel what courſe is to be taken, and if by a warrant from his Majeſty, that your lordſhip ſend him a warrant to be ſigned, which ſhall be returned with all ſpeed. Of other things his Majeſty thinketh it will be time enough to ſpeak at his return to *London*. In the mean time I reſt,

Your Lordſhip's faithful friend and ſervant,

Hinchenbroke, 21 *Octob.* 1618. G. BUCKINGHAM.

From the Original.

CCVI. To the Marquis of BUCKINGHAM.*

My very good Lord,

I HAVE this morning received the petty roll for the Sheriffs. I received alſo the papers exhibited by Sir *Miles Fleetwood*, which I will uſe to his Majeſty's beſt ſervice, and thereupon give account to his Majeſty when time ſerveth.

MY care which is not dormant touching his Majeſty's ſervice, eſpecially that of treaſure (which is now *ſumma ſummarum*) maketh me propound to his Majeſty a matter, which (God is my witneſs) I do without contemplation of friend or end, but *animo recto*.

IF Sir *Edward Coke* continue ſick, or keep in, I fear his Majeſty's ſervice will languiſh too, in thoſe things which touch upon law; as the calling in debts, recuſants, alienations, defalcations, *&c.* And this is moſt certain, that in theſe new diligences, if the firſt beginning cool, all will go back to the old byaſs. Therefore it may pleaſe his Majeſty to think of it, whether there will not be a kind of neceſſity to add my Lord Chief Juſtice of *England* to the commiſſioners of treaſure. This I move only to the King and your lordſhip, otherwiſe it is a thing *ex non entibus*. God preſerve and proſper you.

Your Lordſhip's moſt faithful ſervant,

From the *Star-Chamber*, 25 *Nov.* 1618. FR. VERULAM, *Canc.*

P. S. I forget not *Tufton*'s cauſe. All things ſtay, and precedents are in ſearch.

CCVII. To the Marquis of BUCKINGHAM.

My very good Lord,

THIS long book which I ſend for his Majeſty's ſignature, was upon a conference and conſult yeſternight (at which time I was aſſiſted by the two Chief Juſtices, and attended by the ſurveyor, attorney, and receiver of the court of wards *Fleetwood*) framed and allowed.

IT is long, becauſe we all thought fit not to piece new inſtructions with old inſtructions, but to reduce both old and new into one body of inſtructions. I do not ſee that of the articles, which are many, any could have been ſpared. They are plain, but they have a good property, that they will take faſt hold. I may not trouble his Majeſty with chuſing ſome of them in particular, when all are good: only I think fit to let his Majeſty know of one, which is that according to his own directions: the oath of making no private unlawful profit, is now as well tranſlated to the maſter and officers that may take, as to the parties and ſuitors that may give.

IT little becometh me to poſſeſs his Majeſty that this will be to his Majeſty's benefit ten thouſands yearly, or fifteen thouſands or twenty thouſands: for

theſe rattles are fitter for mountebanks of ſervice, than grave counſellors. But my advices (as far as I am able to diſcern) tend or extend but to thus much: this is his Majeſty's ſureſt and eaſieſt way for his moſt good.

Sir *Miles Fleetwood*, who both now and heretofore hath done very good ſervice in this, meriteth to be particularly from your lordſhip incouraged; which I beſeech your lordſhip not to forget. God ever proſper you.

Your Lordſhip's moſt faithful bounden friend and ſervant,

Dec. 4. 1618. Fr. Verulam, *Canc.*

CCVIII. To the KING.*

May it pleaſe your moſt excellent Majeſty,

According to your Majeſty's pleaſure ſignified to us by the Lord Marquis *Buckingham*, we have conſidered of the fitneſs and conveniency of the gold and ſilver thread buſineſs, as alſo the profit that may accrue unto your Majeſty.

We are all of opinion that it is convenient that the ſame ſhould be ſettled, having been brought hither at the great charge of your Majeſty's now agents, and being a means to ſet many of your poor ſubjects on work, and to this purpoſe there was a former certificate to your Majeſty from ſome of us with others.

And for the profit that will ariſe, we ſee no cauſe to doubt; but do conceive apparent likelihood, that it will redound much to your Majeſty's profit, which we eſteem may be at the leaſt 10,000 *l.* by the year; and therefore in a buſineſs of ſuch benefit to your Majeſty, it were good it were ſettled with all convenient ſpeed, by all lawful means that may be thought of, which notwithſtanding, we moſt humbly leave to your Majeſty's higheſt wiſdom.

Your Majeſty's moſt humble and faithful ſervants,

Fr. Verulam, *Canc.* H. Montagu. Henry Yelverton.

4 *Oct.* 1618. The Marquis of *Buckingham* writes from *Theobalds* to the Lord Chancellor, that the King being deſirous to be ſatisfied of the gold and ſilver thread buſineſs, would have his Lordſhip conſult the Lord Chief Juſtice, and the Attorney and Sollicitor-General therein.

CCIX. To the KING.

It may pleaſe your moſt excellent Majeſty,

I Do many times with gladneſs, and for a remedy of my other labours, revolve in my mind the great happineſs which God (of his ſingular goodneſs) hath accumulated upon your Majeſty every way; and how compleat the ſame would be, if the ſtate of your means were once rectified, and well ordered: your people military and obedient, fit for war, uſed to peace; your church illightened with good preachers, as an heaven of ſtars; your judges learned, and learning from you, juſt, and juſt by your example; your nobility in a right diſtance between crown and people, no oppreſſors of the people, no over-ſhadowers of the crown; your council full of tributes of care, faith, and freedom; your gentlemen and juſtices of the peace willing to apply your royal mandates to the nature of their ſeveral counties, but ready to obey; your ſervants in awe of your wiſdom, in hope of your goodneſs; the fields growing every day, by the improvement and recovery of grounds from the deſert to the garden; the city grown from wood to brick, your ſea-walls or

pomoerium of your iſland ſurveyed, and in edifying; your merchants embracing the whole compaſs of the world, eaſt, weſt, north, and ſouth; the times give you peace, and yet offer you opportunities of action abroad: and laſtly, your excellent royal iſſue entaileth theſe bleſſings and favours of God to deſcend to all poſterity. It reſteth therefore, that God having done ſo great things for your Majeſty, and you for others; you would do ſo much for your ſelf, as to go through (according to your good beginnings) with the rectifying and ſettling of your eſtate and means, which only is wanting; *hoc rebus deſuit unum.* I therefore whom only love and duty to your Majeſty, and your royal line, hath made a *financier*, do intend to preſent unto your Majeſty a perfect book of your eſtate like a perſpective glaſs, to draw your eſtate nearer to your ſight; beſeeching your Majeſty to conceive, that if I have not attained to do that that I would do, in this which is not proper for me, in my element, I ſhall make your Majeſty amends in ſome other thing, in which I am better bred. God ever preſerve, *&c.*

Jan. 2. 1618.

From the Original.

CCX. To the Marquis of BUCKINGHAM.*

My very good Lord,

IF I ſhould uſe the Count *de Gondomar*'s action, I ſhould firſt lay your laſt letter to my mouth, in token of thanks, and then to my heart in token of contentment, and then to my forehead in token of a perpetual remembrance.

I SEND now to know how his Majeſty doth after his remove, and to give you account, that yeſterday was a day of motions in the Chancery. This day was a day of motions in the Star-Chamber, and it was my hap to clear the bar, that no man was left to move any thing, which my Lords were pleaſed to note they never ſaw before. To-morrow is a ſealing day; *Thurſday* is the funeral day; ſo that I pray your lordſhip to direct me whether I ſhall attend his Majeſty *Friday* or *Saturday*. *Friday* hath ſome reliques of buſineſs, and the commiſſioners of treaſure have appointed to meet; but to ſee his Majeſty, is to me above all.

I have ſet down *de bene eſſe*, *Suffolk*'s cauſe, the third ſitting next Term; if the wind ſuffer the commiſſion of *Ireland* to be ſped. I ever more and more reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

This 11th of *May* 1619. FR. VERULAM, *Canc.*

From the Original.

CCXI. To the Lord Chancellor.*

My moſt honourable Lord,

I ACQUAINTED his Majeſty with your letter, at the firſt opportunity after I received it, who was very well pleaſed with that account of your careful and ſpeedy diſpatch of buſineſſes, *&c.*

Yours, &c.

Greenwich, 13 *May* 1619. G. BUCKINGHAM.

P. S. YOUR buſineſs had been done before this, but I knew not whether you would have the attorney or ſollicitor to draw it. *From*

From the Original.

CCXII. To the Lord Chancellor.*

My noble Lord,

I SHEWED your letter of thanks to his Majeſty, who ſays there are too many in it for ſo ſmall a favour, which he holdeth too little to encourage ſo well a deſerving ſervant. For my ſelf I ſhall ever rejoice at the manifeſtation of his Majeſty's favour towards you, and will contribute all that is in me to the encreaſing his good opinion; ever reſting,

Your Lordſhip's faithful friend and ſervant,

G. BUCKINGHAM.

From an Original in the Earl of Oxford's *Library, never before printed.*

CCXIII. To my very loving friends Sir *Thomas Leigh* and Sir *Thomas Puckeringe*, Knights and Baronets.*

AFTER my hearty commendations; being informed by the petition of one *Thomas Porten*, a poor *Yorkſhireman*, of a heavy accident by fire, whereby his houſe, his wife, and a child, together with all his goods, were utterly burnt and conſumed; which misfortune the petitioner ſuggeſts (with much eagerneſs) was occaſioned by the wicked practices and conjurations of one *John Clarkſon* of *Rowington* in the county of *Warwick*, and his daughter, (perſons of a wandering condition) affirming, for inſtance, that one Mr. *Hailes* of *Warwick* did take from the ſaid *Clarkſon* certain books of conjuration and witchcraft: That the truth of the matter may be rightly known, and that *Clarkſon* and his daughter (if there be ground for it) may anſwer the law according to the merit of ſo heinous a fact, I have thought good to wiſh and deſire you to ſend for *Clarkſon*, and his daughter, and as upon due examination you ſhall find cauſe, to take order for their forthcoming, and anſwering of the matter at the next aſſize for the county of *York*; and alſo to confer with Mr. *Hailes*, whether he took from the ſaid *Clarkſon* any ſuch book of conjuration, as the petitioner pretends he did, and to ſee them in ſafe cuſtody. Whereupon I deſire to be certified how you find the matter; and your doing thereupon. So not doubting of your ſpecial care and diligence herein, I bid you heartily farewell, and reſt,

Your very loving friend,

York-houſe, 15 May 1619. FR. VERULAM, *Canc.*

CCXIV. To the Marquis of BUCKINGHAM.

My very good Lord,

I SEND his Majeſty a volume of my Lord of *Bangor*'s and my Lord *Sheffield*, whereof I ſpake when I left his Majeſty at *Theobalds*. His Majeſty may be pleas'd, at his own good time and pleaſure, to caſt his eye upon it. I purpoſe at my coming to *London* to confer with the Chief Juſtice as his Majeſty appointed; and to put the buſineſs of the purſevants in a way, which I think will be beſt by a commiſſion of *Oyer* and *Terminer*; for the ſtar-chamber

ber (without confeſſion) is long ſeas. I ſhould adviſe that this point of the purſevants were not ſingle, but that it be coupled in the commiſſion with the offences of keepers of priſons hereabouts: it hath a great affinity; for purſevants are but ambulatory keepers, and it works upon the ſame party, (of the papiſts:) and it is that wherein many of his Majeſty's and the council's ſevere charges, have been hitherto unfruitful; and it doth a great deal of miſchief. I have ſome other reaſons for it. But of this it will be fitteſt to advertiſe more particularly, what I have reſolved of on advice, upon conference with the Chief Juſtice. I am wonderful glad to hear of the King's good health. God preſerve his Majeſty and your lordſhip. I ever reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury, this laſt of *July* 1619. FR. VERULAM, *Canc.*

From the Original.

CCXV. To the Lord Chancellor.*

My honourable Lord,

YOUR lordſhip hath ſent ſo good news to his Majeſty, that I could have wiſhed you had been the reporter of it your ſelf; but ſeeing you came not, I cannot but give you thanks for employing me in the delivering of that which pleaſed his Majeſty ſo well, whereof he will put your lordſhip in mind, when he ſeeth you. I am glad we are come ſo near together, and hoping to ſee you at *Windſor*, I reſt,

Your Lordſhip's faithful friend and ſervant,

29 *Aug* 1619. G. BUCKINGHAM.

From the Original.

CCXVI. To the Lord Chancellor.*

My honourable Lord,

AS I was reading your lordſhip's letter, his Majeſty came, and took it of my hands, when he knew from whom it came, before I could read the paper incloſed; and told me that you had done like a wiſe counſellor: firſt ſetting down the ſtate of the queſtion, and then propounding the difficulties, the reſt being to be done in its own time.

I am glad of this occaſion of writing to your lordſhip, that I may now let your lordſhip underſtand his Majeſty's good conceit and acceptation of your ſervice, upon your diſcourſe with him at *Windſor*, which though I heard not my ſelf, yet I heard his Majeſty much commend it both for the method and the affection you ſhewed therein to his affairs, in ſuch earneſt manner, as if you made it your only ſtudy and care to advance his Majeſty's ſervice. And ſo I reſt,

Your Lordſhip's faithful friend and ſervant,

Wanſtead, 9 *Sept.* 1619. G. BUCKINGHAM.

CCXVII. To the Marquis of BUCKINGHAM.

My very good Lord,

I THINK it my duty to let his Majeſty know what I find in this cauſe of the *ore tenus*. For as his Majeſty hath good experience, that when his

 buſineſs

buſineſs comes upon the ſtage, I carry it with ſtrength and reſolution; ſo in the proceedings I love to be wary and conſiderate.

I WROTE to your lordſhip by my laſt, that I hoped by the care I had taken, the buſineſs would go well, but without that care I was ſure it would not go well. This I meant becauſe I had had conference with the two Chief Juſtices, Sir *Edward Coke* being preſent, and handled the matter ſo, that not without much ado I left both the Chief Juſtices firm to the cauſe and ſatisfied.

BUT calling to mind that in the main buſineſs, notwithſtanding I and the Chief Juſtices went one way, yet the day was not good (and I ſhould be loth to ſee more of ſuch days) I am not without ſome apprehenſion. For though we have Sir *Edward Coke* earneſt and forward, inſomuch as he adviſed the *ore tenus*, before I knew it at *Wanſtead*, and now bound the *Dutchmen* over to the ſtar-chamber, before I was made privy; unto both which proceedings I did nevertheleſs give approbation: yet if there ſhould be either the major part of the votes the other way, or any main diſtraction, though we bear it through, I ſhould think it a matter full of inconvenience. But that which gives me moſt to think, is the carriage of Mr. Attorney, which ſorteth neither with the buſineſs, nor with himſelf: for as I hear from divers, and partly perceive, he is fallen from earneſt, to be cool and faint: which weakneſs, if it ſhould make the like alteration at the bar, it might overthrow the cauſe. All the remedy which is in my power, is by the advice of the judges to draw ſome other of the learned counſel to his help; which he, I know, is unwilling with, but that is all one.

THIS I thought it neceſſary to write, leſt the King ſhould think me aſleep, and becauſe I know that his Majeſty's judgment is far better than mine. But I, for my part, mean to go on roundly; and ſo I ever reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

Octob. 9. 1619. FR. VERULAM, *Canc.*

IF the King in his great wiſdom ſhould any ways incline to have the *ore tenus* put off, then the way were to command, that the matter of the *ore tenus* ſhould be given in evidence, by way of aggravation in the main cauſe. And it is true, that if this precurſory matter goeth well, it giveth great entrance into the main cauſe; if ill, contrariwiſe, it will do hurt and diſadvantage to the main.

From the Original.

CCXVIII. To the Lord Chancellor.*

My honourable Lord,

THE news of this victory hath ſo well pleaſed his Majeſty, that he giveth thanks to all; and I among the reſt, who had no other part, but the delivering of your letter, had my part of his good acceptation, which he would have rewarded after the *Roman* faſhion with every man a garland, if it had been now in uſe; but after the faſhion of his gracious goodneſs, he giveth your lordſhip thanks: and would have you deliver the like in his Majeſty's name to Sir *Edward Coke* and the judges. Your news which came the firſt, gave his Majeſty a very good breakfaſt, and I hope his health will be the better after it.

Your Lordſhip's faithful friend and ſervant,

14 *Oct.* 1619. G. BUCKINGHAM.

This letter was indorſed,

Thanks on the ſucceſs in the ore tenus *againſt the* Dutch.

CCXIX. To the Marquis of BUCKINGHAM.

My very good Lord,

THESE things which I write now and heretofore in this cauſe, I do not write, ſo as any can take knowledge that I write, but I diſpatch thing *ex officio* here, and yet think it fit inwardly to advertiſe the King what doth occur. And I do aſſure your lordſhip, that if I did ſerve any King whom I did not think far away wiſer than my ſelf, I would not write in the midſt of buſineſs, but go on of my ſelf.

THIS morning, notwithſtanding my ſpeech yeſterday with the † Duke, he delivered this letter incloſed, and I having cleared the room of all ſave the court, and learned counſel (whom I required to ſtay,) the letter was read a little before our hour of ſitting. When it was read, Mr. Attorney began to move, that my lord ſhould not acknowledge his offences as he conceived he had committed them, but as they were charged; and ſome of the lords ſpeaking to that point, I thought fit to interrupt and divert that kind of queſtion; and ſaid, before we conſider'd of the extent of my lord's ſubmiſſion, we were firſt to conſider of the extent of our own duty and power; for that I conceived it was neither fit for us to ſtay proceeding, nor to move his Majeſty in that which was before us in courſe of juſtice: Unto which (being once propounded by me) all the lords and the reſt *una voce* aſſented. I would not ſo much as aſk the queſtion, whether though we proceeded, I ſhould ſend the letter to his Majeſty, becauſe I would not ſtraiten his Majeſty in any thing.

† Of *Lenox*.

THE evidence went well (I will not ſay I ſometime holp it, as far as was fit for a judge;) and at the riſing of the court, I moved their lordſhips openly, whether they would not continue this cauſe from day to day till it were ended; which they thought not fit, in regard of the general juſtice which would be delayed in all courts. Yet afterwards within I prevailed ſo far, as we have appointed to ſit *Wedneſday*, *Thurſday* and *Friday*, and to ſit by eight of the clock, and ſo to diſpatch it before the King come, if we can. God preſerve and proſper you. I ever reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

FR. VERULAM, *Canc.*

This 22 *October*, *Friday* at 4 of the clock, 1619

From the Original.

CCXX. To the Lord Chancellor.*

My honourable Lord,

I HAVE received your letters by both your ſervants, and have acquainted his Majeſty with them, who is exceedingly pleaſed with the courſe you have held in the Earl of *Suffolk*'s buſineſs, and holdeth himſelf ſo much the more beholden to you, becauſe you ſent the letter of your own motion, without order or conſent of the Lords, whereby his Majeſty is not tyed to an anſwer. His Majeſty hath underſtood by many, how worthily your lordſhip hath carried yourſelf both in this and the *Dutch* buſineſs; for which he hath commanded me to give you thanks in his name, and ſeeth your care to be ſo great in all things that concern his ſervice, that he cannot but

but much rejoice in the truſt of ſuch a ſervant, which is no leſs comfort to,

Your Lordſhip's faithful friend and ſervant,

Royſton, 23 Oct. 1619. G. BUCKINGHAM.

Indorſed thus,

On my Lord of Bucks *incloſing a letter of ſubmiſſion from my Lord of* Suffolk.

CCXXI. To the Marquis of BUCKINGHAM.

My very good Lord,

MY Lord of *Suffolk*'s cauſe is this day ſentenced. My lord and his lady fined together at 30,000 *l.* with impriſonment in the tower at their own charge. *Bingley* at 2000 *l.* and committed to the fleet. Sir *Edward Coke* did his part, I have not heard him do better, and began with a fine of an 100,000 *l.* but the judges firſt, and moſt of the reſt, reduced it as before. I do not diſlike that things paſſed moderately, and all things conſidered it is not amiſs, and might eaſily have been worſe.

THERE was much ſpeaking of interceding for the King's mercy, which in my opinion, was not ſo proper for a ſentence. I ſaid in concluſion, that mercy was to come *ex mero motu*, and ſo left it: I took ſome other occaſion pertinent to do the King honour, by ſhewing how happy he was in all other parts of his government, ſave only in the manage of his treaſure by his officers.

I have ſent the King a new bill for *Suſſex*; for my Lord of *Nottingham*'s certificate was true, and I told the judges of it before; but they neglected it. I conceive the firſt man, which is newly ſet down, is the fitteſt. God ever preſerve and proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

Nov. 13. 1619. FR. VERULAM. *Canc.*

CCXXII. To the Marquis of BUCKINGHAM.

My very good Lord,

I DO not love to interlope by writing in the midſt of buſineſs: but becauſe his Majeſty commanded me to acquaint him with any occurrence which might croſs the way, I have thought fit to let his Majeſty know what hath paſſed this day.

THIS day (which was the day ſet down) the great cauſe of the *Dutchmen* was enter'd into. The pleading being open'd, and the caſe ſtated by the counſel; the counſel of the defendants made a motion to have certain examinations taken concerning the old defendants ſuppreſſed, becauſe they were taken ſince the laſt hearing.

I SET the buſineſs in a good way, and ſhewed they were but ſupplemental, and that at the laſt hearing there were ſome things extrajudicial alledged *ad infirmandum conſcientiam judicis*, and therefore there was more reaſon theſe ſhould be uſed *ad informandum conſcientiam judicis*, and that there was order for it. The order was read, and approved both by the court, and the defendant's own council; but it was alledged, that the order was not enter'd time enough, whereby the defendants might likewiſe examine: wherein certainly there

there was ſome ſlip or forgetfulneſs in Mr. Attorney or *Brittain* that followed it, which I with had been otherwiſe; yet it went fair out of the court.

But after dinner my lords were troubled about it, and after much diſpute, we have agreed to confer ſilently, and *ſine ſtrepitu* to-morrow, and ſet all ſtrait, calling the judges, and the learned counſel, with whom I have ſpoken this evening, I think, to good purpoſe. For in good faith I am fain to be *omnibus omnia*, as St. *Paul* ſaith, to ſet forward his Majeſty's ſervice.

I discern a kind of inclination to take hold of all accidents to put off the cauſe, whereunto neither I ſhall give way, nor I hope his Majeſty; to-morrow, if cauſe be, I ſhall write more, but I hope all ſhall be well. I ever reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

Friday night, Nov. 19. 1619. Fr. Verulam, *Canc.*

CCXXIII. To the Marquis of Buckingham.

My very good Lord,

I Have conferred with Sir *Lionel Cranfield* according to his Majeſty's ſpecial commandment, touching two points of value, for the advancement (the one preſent, the other ſpeedy) of his Majeſty's revenue.

The firſt is of the currants, to reſtore the impoſition of five ſhillings ſix pence, laid in the late Queen's time, and drawn down unduly to ſerve private turns to three ſhillings four pence; which will amount to above three thouſand pounds yearly increaſe.

The other is of the tobacco, for which there is offer'd 2000 *l.* increaſe yearly, to begin at *Michaelmas* next, as it now is, and 3000 *l.* increaſe, if the plantations of tobacco here within land be reſtrained.

I approve, in mine own judgment, both propoſitions, with theſe cautions: That for the firſt the farmers of the currants do by inſtrument under their ſeals relinquiſh to the King all their claim thereto, by any general words of their patent. And for the ſecond, that the bargain be concluded and made before the proclamation go forth; wherein perhaps there will occur ſome doubt in law, becauſe it reſtraineth the ſubject in the employment of his freehold at his liberty. But being ſo many ways *pro bono publico*, I think it good enough.

His Majeſty may therefore be pleaſed to write his letter to the commiſſioners of the treaſury, ſignifying his Majeſty's pleaſure directly in both points to have them done, and leaving to us the conſideration *de modo*. God ever proſper you. I reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

Nov. 22. 1619. Fr. Verulam, *Canc.*

From the Original.

CCXXIV. To the Marquis of Buckingham.*

My very good Lord,

I Send the ſubmiſſion of Sir *Thomas Lake* drawn in ſuch form as upon a meeting with me, of the chief juſtices, and the learned counſel, was conceived agreeable to his Majeſty's meaning and directions; yet leſt we ſhould err, we thought good to ſend it to his Majeſty. It is to be returned with

 ſpeed,

ſpeed, or elſe there will be no day in Court to make it. God bleſs and proſper you. I reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

28 *Nov.* 1619. FR. VERULAM, *Canc.*

From the Original.

CCXXV. To the Lord Chancellor.*

My honourable Lord,

I HAVE acquainted his Majeſty with your lordſhip's letter, and with the ſubmiſſion you ſent drawn for Sir *Thomas Lake*, which his Majeſty liketh well, and becauſe he ſerved him in ſo honourable a place, is graciouſly pleaſed that he maketh ſubmiſſion in writing, ſo that my Lady of *Exeter* be contented and the lords, whom his Majeſty would have you acquaint therewith. And ſo I reſt,

Your Lordſhip's faithful friend and ſervant,

Newmarket, 29 *Nov.* 1619. G. BUCKINGHAM.

From the Original.

CCXXVI. To the Marquis of BUCKINGHAM.*

My very good Lord,

WE ſentence to-morrow, but I write to-day, becauſe I would not leave the King in ſuſpenſe.

I SHALL write, not ſo good news as I would, but better than I expected.

WE met amongſt our ſelves to-day, which I find was neceſſary, more than convenient. I gave aim that the meeting was not to give a privy verdict, or to determine what was a good proof or not a good proof, nor who was guilty or not guilty, but only to think of ſome fit proportion of the fines, that there mought be leſs diſtraction in the ſentence, in a cauſe ſo ſcattered; ſome would have entered into the matter it ſelf, but I made it good and kept them from it.

I PERCEIVE the old defendants will be cenſured as well as the new, (which was the gole) and I am perſuaded the King will have a great deal of honour of the cauſe. Their fines will be moderate, but far from contemptible. The attorney did very well to-day; I perceive he is a better pleader than a director, and more eloquent than conſiderate.

LITTLE thinks the King what ado I have here, but I am ſure I acquit my truſt. To-morrow I will write particularly. God ever preſerve you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

Tueſday afternoon, this 7th *Dec.* 1619. FR. VERULAM, *Canc.*

The Marquis of *Buckingham* writes that he had acquainted his Majeſty with this letter, who commanded him to give the Lord Chancellor thanks for his ſpeed in advertiſing thoſe things that paſs, and for the great care he ever ſeeth his lordſhip has in his ſervice.

From the Original.

CCXXVII. To the Lord Chancellor.*

My Lord,

HIS Majeſty having ſeen in this great buſineſs your exceeding care and diligence in his ſervice by the effect which hath followed thereupon; hath commanded me to give you many thanks in his name, and to tell you that he ſeeth you play the part of all in all, *&c.*

Yours, &c.

Newmarket, 10 *Dec.* 1619. G. BUCKINGHAM.

Endorſed, *In the* Dutch *Cauſe.*

From the Original.

CCXXVIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

TO keep form, I have written immediately to his Majeſty of Juſtice *Croke*'s death, and ſend your lordſhip the letter open, wiſhing time were not loſt. God preſerve and proſper you.

Your Lordſhip's ever,

24 Jan. 1619. FR. VERULAM, *Canc.*

From the Original.

CCXXIX. To the Marquis of BUCKINGHAM.*

My very good Lord,

I DOUBT not but Sir *Giles Montpeſſon* advertiſeth your lordſhip how our revenue buſineſs proceeds. I would his Majeſty had reſted upon the firſt names; for the additionals, ſpecially the exchequer man, doth not only weaken the matter, but weakeneth my forces in it, he being thought to have been brought in acroſs. But I go on and hope good ſervice will be done.

FOR the Commiſſions to be publiſhed in the ſtar-chamber, for which it pleaſeth his Majeſty to give me ſpecial thanks, I will have ſpecial care of them in time. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

10th *Feb.* 1619. FR. VERULAM, *Canc.*

CCXXX. To the KING.

May it pleaſe your moſt excellent Majeſty,

ACCORDING to your commandment, we met together yeſterday at *Whitehall*, and there conſulted what courſe were fitteſt to be taken now in this buſineſs of your Majeſty's Attorney-General, both for the ſatisfying your own honour, as alſo for calling in the late exorbitant charter of the city; which are the two ends, as we conceive, that your Majeſty propos'd unto your ſelf.

To

To effect both which, we humbly presume to present thus much unto your Majesty as our opinion. First, that an information be put into the star-chamber, as we formerly advised, against your attorney as delinquent, against the mayor, &c. as interested, and against the recorder also, mixtly with some touch of charge.

That the submission by letter offer'd by Mr. Attorney is no way satisfactory for your Majesty's honour; but is to be of record by way of answer, and deduced to more particulars.

That any submission or surrender of the patents by the city, should be also of record in their answer; and no other can be receiv'd with your Majesty's honour, but by answer in court: the same to come merely of themselves, without any motion on your Majesty's behalf, directly or indirectly; which being done in this form, it will be afterwards in your Majesty's choice and pleasure to use mercy, and to suspend any farther proceedings against your attorney.

That it is of necessity as well for the putting in of this information, as for your Majesty's other urgent and publick services in that and other courts, to have a sequestration presently of your attorney, and a provisional commission to some other during your Majesty's pleasure to execute that charge. For both which, instruments legal shall be provided as soon as your Majesty's pleasure is known. To which we humbly and dutifully submit our advice and opinion, beseeching God to bless your Majesty's sacred person with continuance and encrease of much health and happiness: wherewith humbly kissing your royal hands, we rest,

Your Majesty's most humble, and faithful subjects and servants,

At your Majesty's Palace of *Whitehall, June* 16. 1620.

Fr. Verulam. *Canc.* T. Arundel, Robert Naunton, Geo. Calvert, Jul. Caesar, Edw. Coke.

CCXXXI. To the Marquis of Buckingham.

My very good Lord,

I Have lately certified his Majesty on the behalf of Sir *George Chaworth*, by Secretary *Calvert*, touching the place of a remembrancer in the chancery for setting down of causes. And because the gentleman telleth me, the King thought my certificate a little doubtful; he desired me to write to your lordship, touching my approbation more plainly. It is true, that I conceive it to be a good business, and will be for the service of the court, and ease of the subject; I will look it shall be accompanied with good cautions.

We ruffle over business here in council apace, and I think to reasonable good purpose. By my next I will write of some fit particulars. I ever rest,

Your most obliged friend and faithful servant,

June 21. 1620. Fr. Verulam, *Canc.*

CCXXXII. To the Marquis of Buckingham.

My very good Lord,

The tobacco business is well settled in all points. For the coals, they that brought the offer to Secretary *Calvert*, do very basely shrink from their words; but we are casting about to piece it and perfect it. The two goose-quills *Maxwell* and *Alured* have been pulled, and they have made submissions

miſſions in that kind which the board thought fit: for we would not do them the honour to require a recantation of their opinion, but an acknowledgment of their preſumption.

His Majeſty doth very wiſely (not ſhewing much care or regard to it) yet really to ſuppreſs their licentious courſe of talking and writing. My old Lord *Burghley* was wont to ſay, that the *Frenchman* when he hath talked, he hath done; but the *Engliſhman* when he hath talked, he begins. It evaporateth malice and diſcontent in the one, and kindleth it in the other. And therefore upon ſome fit occaſion I wiſh a more publick example. The King's ſtate, if I ſhould now die and were opened, would be found at my heart, as Queen *Mary* ſaid of *Calais*; we find additionals ſtill, but the conſumption goeth on. I pray God give his Majeſty reſolution, paſſing by at once all impediments and leſs reſpects, to do that which may help it, before it be irremediable. God ever preſerve and proſper your lordſhip.

Your Lordſhip's moſt obliged friend and faithful ſervant;

23 July 1620. FR. VERULAM, *Canc.*

I have ſtaid the thouſand pounds ſet upon *Engleſield* for his Majeſty, and given order for levying it.

From the Original.

CCXXXIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

ONE gave me a very good precept for the ſtone; that I ſhould think of it moſt when I feel it leaſt. This I apply to the King's buſineſs, which ſurely I revolve moſt when I am leaſt in action, whereof at my attendance I will give his Majeſty ſuch account as can proceed from my poor and mean abilities, which as his Majeſty out of grace may think to be more than they are, ſo I out of deſire may think ſometime they can effect more than they can. But ſtill it muſt be remembred, that the ſtringing of the harp, nor the tuning of it will not ſerve, except it be well play'd on from time to time.

IF his Majeſty's buſineſs or commandments require it, I will attend him at *Windſor*, though I would be glad to be ſpared, becauſe quick airs at this time of the year do affect me. At *London*, and ſo at *Theobalds* and *Hampton-Court*, I will not fail God willing to wait upon his Majeſty. Mean while I am exceeding glad to hear his Majeſty hath been luſty and well this progreſs. Thus, much deſiring to ſee your lordſhip, *cujus amor tantum mihi creſcit in horas* (as the poet ſaith) I ever remain.

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury, this 30th of *Aug.* 1620. FR. VERULAM, *Canc.*

From the Original.

CCXXXIV. To the Marquis of BUCKINGHAM. *

My very good Lord,

I WRITE now only a letter of thanks to his Majeſty, for that I hear, in my abſence he was pleaſed to expreſs towards me (though unworthy) a great

great deal of grace and good opinion before his lords; which is much to my comfort, whereunto I muſt ever impute your lordſhip as acceſſary. I have alſo written to him what ſignification I received from Secretary *Naunton* of his Majeſty's will and pleaſure, leſt in ſo great a buſineſs there ſhould be any miſtaking.

THE pain of my foot is gone, but the weakneſs doth a little remain, ſo as I hope within a day or two to have full uſe of it. I ever remain

Your Lordſhip's moſt obliged friend and faithful ſervant,

2 *Octob.* 1620. FR. VERULAM, *Canc.*

From the Original.

CCXXXV. To the KING. *

It may pleaſe your Majeſty,

I THOUGHT my ſelf an unfortunate Man that I could not attend you at *Theobalds*. But I hear that your Majeſty hath done, as God Almighty uſeth to do, which is to turn evil into good, in that your Majeſty hath been pleaſed upon that occaſion to expreſs before your lords your gracious opinion and favour towards me, which I moſt humbly thank your Majeſty for, and will aſpire to deſerve.

Secretary *Naunton* this day brought me your pleaſure in certain notes: that I ſhould adviſe with the two Chief Juſtices (old parliament men) and Sir *Edward Coke* (who is alſo their ſenior in that ſchool) and Sir *Randall Crewe* the laſt ſpeaker, and ſuch other judges as we ſhould think fit touching that which mought in true policy, without packing or degenerate arts, prepare to a parliament, in caſe your Majeſty ſhould reſolve of one to be held, and withal he ſignified to me ſome particular points, which your Majeſty very wiſely had deduced.

ALL your Majeſty's buſineſs is *ſuper cor meum*, for I lay it to heart, but this is a buſineſs *ſecundum cor meum*; and yet, as I will do your Majeſty all poſſible good ſervices in it, ſo I am far from ſeeking to impropriate to my ſelf the thanks, but ſhall become *omnibus omnia* (as St. *Paul* ſaith) to attain your Majeſty's ends.

As ſoon as I have occaſion, I will write to your Majeſty touching the ſame, and will have ſpecial care to communicate with my lords, in ſome principal points, though all things are not at firſt fit for the whole table. I ever reſt,

Your Majeſty's moſt bounden and moſt devoted ſervant,

2 *October* 1620. FR. VERULAM, *Canc.*

YOUR Majeſty needeth not to doubt but that I ſhall carry the buſineſs with that ſecrecy which appertaineth.

CCXXXVI. To the Marquis of BUCKINGHAM.

My very good Lord,

YESTERDAY I called unto us the two Chief Juſtices, and Serjeant *Crewe*, about the parliament buſineſs. To call more judges, I thought not good. It would be little to aſſiſtance, much to ſecrecy: the diſtribution of the buſineſs we made was into four parts.

I. THE

I. The peruſing of the former grievance, and of things of like nature which have come ſince.

II. The conſideration of a proclamation with the clauſes thereof, eſpecially touching elections; which clauſes nevertheleſs we are of opinion ſhould be rather monitory than excluſive.

III. The incluſive: that is to ſay, what perſons were fit to be of the houſe; tending to make a ſufficient and well-compoſed houſe of the ableſt men of the kingdom, fit to be adviſed with *circa ardua regni*, as the ſtyle of the writs goeth, according to the pure and true inſtitution of a parliament; and of the means to place ſuch perſons without novelty or much obſervation. For this purpoſe we made ſome liſts of names of the prime counſellors, and principal ſtateſmen or courtiers; of the graveſt or wiſeſt lawyers; of the moſt reſpected and beſt-temper'd knights and gentlemen of the county. And here *obiter* we did not forget to conſider who were the *boutefeus* of the laſt ſeſſion, how many of them are dead, how many reduced, and how many remain, and what were fit to be done concerning them.

IV. The having ready of ſome commonwealth bills, that may add reſpect and acknowledgment of the King's care; not wooing bills to make the King and his graces cheap; but good matter to ſet them on work, that an empty ſtomach do not feed upon humour.

Of theſe four points, that which concerneth perſons is not ſo fit to be communicated with the council-table, but to be kept within fewer hands. The other three may when they are ripe.

Mean while I thought good to give his Majeſty an account what is done, and in doing, humbly craving his direction if any thing be to be alter'd or added; though it may be our ſelves ſhall have ſecond thoughts, this being but the reſult of our firſt meeting.

The ſtate of his Majeſty's treaſure ſtill maketh me ſad, and I am ſorry I was not at *Theobalds* to report it, or that it was done by my fellows: it is moſt neceſſarily we do it faithfully and freely: For to flatter in this, were to betray his Majeſty with a kiſs. I humbly pray his Majeſty to think of my former counſel; and this I will promiſe, that whomſoever his Majeſty ſhall make Treaſurer, if his Majeſty ſhall direct him to have relation to my advice, I will continue the ſame care and advice I do now, and much more chearfully when I ſhall perceive, that my propoſitions ſhall not be *literae ſcriptae in glacie.*

Mean while to keep the commiſſion in doing of ſomewhat worth the doing; it may pleaſe his Majeſty to take knowledge, that upon our report we had agreed to make remonſtrance to him, that we thought *Ireland* might (if his Majeſty leave it to our care) be brought by divers good expedients to bear their own charge; and therefore his Majeſty may be pleas'd by his commandment to ſet us in hand with it out of hand. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

October 7. 1620. Fr. Verulam, *Canc.*

From the Original.

CCXXXVII. To the Lord Chancellor. *

My Lord,

I Have acquainted his Majeſty with your letter, and labour in his ſervice, for which he commandeth me to give you thanks, and to let your lordſhip know, that he liketh exceeding well your method held by the judges,

which could not be amended, and concurreth with you in your opinions. *Firſt*, touching the proclamation, that it ſhould be monitory and perſuaſive rather than compulſive: and, *ſecondly*, that the point concerning the perſons, who ſhould be admitted, and who avoided, is fit to be kept from the knowledge of the council-table, and to be carried with all ſecrecy.

For the buſineſs of *Ireland*, his Majeſty had heard of it before, and gave commandment to the maſter of the wards, that it ſhould be haſtened and ſet in hand with all ſpeed, which his Majeſty doubteth not but is done by this time. Touching your advice for a Treaſurer, his Majeſty is very mindful of it, and will let you know as much at his return, when he will ſpeak further with your lordſhip of it. And ſo I reſt,

Yours, &c.

Royſton, 9 Oct. 1620. G. Buckingham.

CCXXXVIII. This letter was written with the King's own hand, to my Lord Chancellor Verulam, upon his Lordſhip's ſending to his Majesty his *Novum Organum*.

My Lord,

I Have received your letter, and your book, than the which, you could not have ſent a more acceptable preſent unto me. How thankful I am for it, cannot better be expreſſed by me, than by a firm reſolution I have taken; firſt to read it through with care and attention, though I ſhould ſteal ſome hours from my ſleep: having otherwiſe, as little ſpare time to read it, as you had to write it. And then to uſe the liberty of a true friend, in not ſparing to aſk you the queſtion in any point whereof I ſhall ſtand in doubt: *nam ejus eſt explicare, cujus eſt condere:* as, on the other part, I will willingly give a due commendation to ſuch places as, in my opinion, ſhall deſerve it. In the mean time I can with comfort aſſure you, that you could not have made choice of a ſubject more befitting your place, and your univerſal and methodical knowledge; and in the general, I have alarady obſerved, that you jump with me, in keeping the mid-way between the two extremes; as alſo in ſome particulars, I have found that you agree fully with my opinion. And ſo praying God to give your work as good ſucceſs as your heart can wiſh, and your labours deſerve, I bid you heartily farewel.

October 16 1620. *JAMES* R.

CCXXXIX. To the Marquis of Buckingham.

My very good Lord,

I Send his Majeſty a form of a proclamation for the parliament, which I thought fit to offer firſt to his Majeſty's peruſal, before I acquainted the council.

For that part which concerneth the foreign buſineſs, his Majeſty will graciouſly conſider, how eaſy it is for me to miſtake, or not to attain; which his Majeſty in his wiſdom will pardon, correct, and direct.

For that part touching the elections, I have communicated it with my collegues, Sir *Edward Coke*, the two Chief Juſtices, and Serjeant *Crew*, who approve it well; and we are all of opinion, that it is not good to have it more peremptory, more particular, nor more ſharp.

We

We are thinking of ſome commonwealth laws, amongſt which I would have one ſpecial for the maintenance of the navy, as well to give occaſion to publiſh (to his Majeſty's honour) what hath been already done; as, to ſpeak plainly, to do your lordſhip honour in the ſecond place; and beſides, it is agreeable to the times. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

October 18. 1620. Fr. Verulam, *Canc.*

CCXL. Draught of a Proclamation for a Parliament, referred to in the preceding letter.

As in our princely judgment we hold nothing more worthy of a chriſtian monarch, than the conſervation of peace at home and abroad; whereby effuſion of chriſtian blood, and other calamities of war are avoided; trade is kept open, laws and juſtice retain their due vigor and play, arts and ſciences flouriſh, ſubjects are leſs burthened with taxes and tallages, and infinite other benefits redound to the ſtate of a common-weal: ſo in our own practice we ſuppoſe there hath been ſeldom any King, that hath given more expreſs teſtimonies and real pledges of this deſire to have peace conſerved, than we have done in the whole courſe of our regiment.

For neither have we, for that which concerns our ſelves, been ready to apprehend or embrace any occaſions or opportunities of making war upon our neighbours; neither have we omitted, for that which may concern the ſtates abroad, any good office or royal endeavour, for the quenching of the ſparks of troubles and diſcords in foreign parts. Wherein, as we have been always ready and willing, ſo we wiſh that we had been always as happy and prevailing in our advices and counſels that tended to that end.

And yet do we not forget, that God hath put into our hands a ſceptre over populous and warlike nations, which might have moved us to ſecond the affection and diſpoſition of our people, and to have wrought upon it for our own ambition, if we had been ſo minded. But it hath ſufficed unto us to ſeek a true and not ſwelling greatneſs, in the plantations and improvements of ſuch parts of our dominions, as have, in former times, been more deſolate or uncivil, and in the maintaining of all our loving ſubjects in general in tranquillity and ſecurity, and the other conditions of good government, and happy times. But amongſt other demonſtrations of our conſtant purpoſe, and provident care to maintain peace, there was never ſuch a trial, nor ſo apparent to the world (as in a theatre) as our perſiſting in the ſame reſolution, ſince the time that our dear ſon-in-law was elected and accepted King of *Bohemia*; by how much the motives tending to ſhake and aſſail our ſaid reſolution were the more forcible. For neither did the glory of having our deareſt daughter and ſon-in-law to wear a crown; nor the extreme alacrity of our people devoted to that cauſe; nor the repreſentations, which might be ſet before us of dangers, (if we ſhould ſuffer a party in Chriſtendom, held commonly adverſe and ill affected to our ſtate and government, to gather farther reputation and ſtrength) tranſport us to enter into an auxiliary war, in proſecution of that quarrel: but contrariwiſe, finding the juſtice of the cauſe not ſo clear, as that we could be preſently therein ſatisfied; and weighing with our ſelves likewiſe, that if the kingdom of *Bohemia* had continued in the houſe of *Auſtria*, yet nevertheleſs, the balance of Chriſtendom had ſtood in no other ſort than it had done for many years before, without increaſe of party; and chiefly

fearing that the wars in thoſe parts of *Germany*, which have been hitherto the bulwark of Chriſtendom, againſt the approaches of the *Turk*, might by the inteſtine diſſenſions, allure and let in the common enemy; we did abſtain to declare or engage our ſelves in that war, and were contented only to give permiſſion to the ambaſſador of our ſon-in-law, to draw ſome voluntary helps of men and money from our ſubjects, being a matter that violated no treaty, and could not be denied in caſe of ſo near a conjunction.

But while we contained our ſelves in this moderation, we find the event of war hath much altered the caſe, by the late invaſion of the *Palatinate*, whereby (howſoever under the pretence of a diverſion) we find our ſon in fact expulſed in part, and in danger to be totally diſpoſſeſſed of his ancient inheritance and patrimony, ſo long continued in that noble line; whereof we cannot but highly reſent, if it ſhould be alienated and raviſhed from him in our times, and to the prejudice of our grand-children and line-royal. Neither can we think it ſafe for us in reaſon of ſtate, that the county *Palatine*, carrying with it ſelf an electorate, and having been ſo long in the hands of princes of our religion, and no way depending upon the houſe of *Auſtria*, ſhould now become at the diſpoſing of that houſe; being a matter, that indeed might alter the balance of Chriſtendom importantly, to the weakening of our eſtate, and the eſtate of our beſt friends and confederates.

Wherefore, finding a concurrence of reaſons and reſpects of religion, nature, honour, and eſtate; all of them inducing us in no wiſe to indure ſo great an alteration; we are reſolved to imploy the uttermoſt of our forces and means, to recover and reſettle the ſaid *Palatinate* to our ſon and our deſcendants, purpoſing nevertheleſs, according to our former inclination ſo well grounded, not altogether to intermit (if the occaſions give us leave) the treaties of peace and accord, which we have already begun, and whereof the coming on of the winter, and the counterpoiſe of the actions of war, hitherto may give us as yet ſome appearance of hope.

I pray God this hold.

But foraſmuch as it were great improvidence to depend upon the ſucceſs of ſuch treaties, and therefore good policy requires that we ſhould be prepared for a war, which we intend for the recovery and aſſuring of the ſaid *Palatinate*, with the dependences, (a deſign of no ſmall charge and difficulty, the ſtrength and conjunctures of the adverſe party conſidered) we have thought good to take into our princely and ſerious conſideration (and that with ſpeed) all things that may have relation to ſuch a deſignment; amongſt which, we hold nothing more neceſſary, than to confer and adviſe with the common-council of our kingdom, upon this ſo important a ſubject.

For although the making of war or peace be a ſecret of empire, and a thing properly belonging to our high prerogative royal, and imperial power; yet nevertheleſs, in cauſes of that nature, which we ſhall think fit not to reſerve, but to communicate; we ſhall ever think our ſelves much aſſiſted and ſtrengthened by the faithful advice, and general aſſent of our loving ſubjects.

Moreover, no man is ſo ignorant, as to expect that we ſhould be any ways able (moneys being the ſinews of war) to enter into the liſt againſt ſo great potentates, without ſome large and bountiful help of treaſure from our people; as well towards the maintenance of the war, as towards the relief of our crown and eſtate. And this the rather, for that we have now, by the ſpace of full ten years, (a thing unheard of in late times) ſubſiſted by our own means, without being chargeable to our people, otherwiſe than by ſome voluntary gifts of ſome particulars, which though in total amounted to no great matter, we thankfully acknowledge at their hands: but, as while the af-

fairs abroad were in greater calm, we did content our ſelves to recover our wants by provident retrenchment of charge, and honourable improvement of our own, thinking to wear them out without troubling our people; ſo in ſuch a ſtate of Chriſtendom as ſeemeth now to hang over our heads, we durſt no longer rely upon thoſe ſlow remedies, but thought neceſſary (according to the ancient courſe of our progenitors) to reſort to the good affections and aids of our loving ſubjects.

Upon theſe conſiderations, and for that alſo in reſpect of ſo long intermiſſion of a parliament, the times may have introduced ſome things fit to be reformed, either by new laws, or by the moderate deſires of our loving ſubjects, dutifully intimated unto us, (wherein we ſhall ever be no leſs ready to give them all gracious ſatisfaction, than their own hearts can deſire) we have reſolved, by the advice of our privy-council, to hold a parliament at our city of *Weſtminſter*.

And becauſe as well this great cauſe (there to be handled amongſt the reſt, and to be weighed by the beam of the kingdom) as alſo the true and ancient inſtitution of parliament, do require the lower-houſe (at this time if ever) to be compounded of the graveſt, ableſt, and worthieſt members that may be found: we do hereby, out of the care of the common good, wherein themſelves are participant (without all prejudice to the freedom of elections) admoniſh all our loving ſubjects (that have votes in the elections of knights and burgeſſes) of theſe few points following.

First, That they caſt their eyes upon the worthieſt men of all ſorts, knights and gentlemen, that are lights and guides in their countries, experienced parliament-men, wiſe and diſcreet ſtateſmen, that have been practiſed in publick affairs, whether at home or abroad; grave and eminent lawyers, ſubſtantial citizens and burgeſſes, and generally ſuch as are intereſted and have portion in the eſtate.

Secondly, That they make choice of ſuch as are well affected in religion, without declining either one the one hand to blindneſs and ſuperſtition, or on the other hand to ſchiſm or turbulent diſpoſition.

Thirdly, and laſtly, That they be truly ſenſible, not to diſvalue or diſparage the houſe with bankrupts and neceſſitous perſons, that may deſire long parliaments only for protection; lawyers of mean account and eſtimation; young men that are not ripe for grave conſultations; mean dependents upon great perſons, that may be thought to have their voices under command, and ſuch like obſcure and inferiour perſons: ſo that to conclude, we may have the comfort to ſee before us the very face of a ſufficient and well compoſed houſe, ſuch as may be worthy to be a repreſentative of the third eſtate of our kingdom, fit to nouriſh a loving and comfortable meeting between us and our people, and fit to be a noble inſtrument, under the bleſſing of Almighty God, and our princely care and power, and with the loving conjunction of our prelates and peers, for the ſettling of ſo great affairs as are before expreſſed.

From the Original.

CCXLI. To the Lord Chancellor.*

My honourable Lord,

I Have ſhewed your letter and the proclamation to his Majeſty, who expecting only, according as his meaning was, directions therein for the well ordering of the elections of the burgeſſes, findeth a great deal more, con-

containing matter of ſtate, and the reaſons of calling the parliament; whereof neither the people are capable, nor is it fit for his Majeſty to open unto them, but to reſerve to the time of their aſſembling, according to the courſe of his predeceſſors, which his Majeſty intendeth to follow. The declaring whereof in the proclamation, would cut off the ground of his Majeſty's, and your lordſhip's ſpeech, at the proper time; his Majeſty hath therefore extracted ſomewhat of the latter part of the draught you have ſent, purpoſing to take a few days ſpace to ſet down himſelf what he thinketh fit, and to make it ready againſt his return hither, or to *Theobalds* at the furtheſt, and then to communicate it to your lordſhip, and the reſt of the lords. And ſo I reſt,

Yours, &c.

Royſton, 19 *Octob.* 1620. G. BUCKINGHAM.

CCXLII. To Sir † HENRY WOTTON.

My very good couſin,

THE letter which I receiv'd from your lordſhip upon your going to ſea, was more than a compenſation for any former omiſſion; and I ſhall be very glad to entertain a correſpondence with you in both kinds which you write of: for the latter, I am now ready for you, having ſent you ſome ore of that mine. I thank you for your favours to Mr. *Meautys*, and I pray continue the ſame. So wiſhing you out of your honourable exile, and placed in a better orb, I reſt,

Your Lordſhip's affectionate kinſman, and aſſured friend,

York-houſe, *Oct.* 20. 1620. FR. VERULAM, *Canc.*

† Mr. *Stephens* obſerves, when this letter was written upon the occaſion of my Lord Chancellor's publiſhing his *Novum Organum*; Sir *Henry Wotton*, ſo eminent for his many embaſſies, great learning, candor, and other accompliſhments, was reſident at *Vienna*, endeavouring to quench that fire which began to blaze in *Germany*, upon the proclaiming the Elector *Palatine* King of *Bohemia*. How grateful a preſent this book was to Sir *Henry*, cannot better be expreſſed than by his anſwer to this letter; which, though it may be found in his remains, the reader will not be diſpleas'd to ſee part of it tranſcribed in this place.

Right honourable and my very good Lord,

I HAVE your lordſhip's letters dated *Octob.* 20, and I have withal, by the care of my couſin *Meautys*, and by your own ſpecial favour, three copies of that work, wherewith your lordſhip hath done a great and ever-living benefit to all the children of nature, and to nature her ſelf, in her uttermoſt extent and latitude; who never before had ſo noble nor ſo true an interpreter, or (as I am ready to ſtyle your lordſhip) never ſo inward a ſecretary of her cabinet. But of your ſaid work (which came but this week to my hands) I ſhall find occaſion to ſpeak more hereafter; having yet read only the firſt book thereof, and a few aphoriſms of the ſecond. For it is not a banquet that men may ſuperficially taſte, and put up the reſt in their pockets; but in truth a ſolid feaſt, which requireth due maſtication —— *and ſo on.*

But I am gone farther than I meant in ſpeaking of this excellent labour, while the delight yet I feel, and even the pride that I take in a certain congeniality (as I may term it) with your lordſhip's ſtudies, will ſcant let me ceaſe. And indeed I owe your lordſhip, even by promiſe, (which you are pleas'd to remember, and thereby doubly binding me) ſome trouble this way; I mean by the commerce of philoſophical experiments, which ſurely, of all other, is the moſt ingenious traffick.

CCXLIII. Lord of St. ALBANS to Mr. MATTHEWS.

SIR,

THE report of this act, which I hope will prove the laſt of this buſineſs, will probably, by the weight it carries, fall and ſeize on me. And therefore, not now at will, but upon neceſſity it will become me, to call

call to mind what paſſed; and (my head being then wholly employed about invention) I may the worſe put things, upon the account of mine own memory. I ſhall take phyſick to-day, upon this change of weather, and vantage of leiſure; and I pray you not to allow your ſelf ſo much buſineſs, but that you may have time to bring me your friendly aid before night, *&c.*

CCXLIV. To Mr. MATTHEWS, believing his danger leſs than he found it.

SIR,

I SAY to you, upon the occaſion which you give me in your laſt, *modicae fidei, quare dubitaſti?* I would not have my friends (though I know it be out of love) too apprehenſive either of me, or for me; for, I thank God, my ways are ſound and good, and I hope God will bleſs me in them. When once my maſter, and afterwards my ſelf, were both of us in extremity of ſickneſs, (which was no time to diſſemble) I never had ſo great pledges and certainties of his love and favour: and that which I knew then, ſuch as took a little poor advantage of theſe later times, know ſince. As for the nobleman who paſſed that way by you, I think he is faln out with me for his pleaſure, or elſe, perhaps, to make good ſome of his own miſtakings. For he cannot in his heart but think worthily of my affection and well-deſerving towards him; and as for me, I am very ſure that I love his nature and parts.

CCXLV. To Mr. MATTHEWS, expreſſing great acknowledgment and kindneſs.

SIR,

I HAVE been too long a debtor to you for a letter; and eſpecially for ſuch a letter, the words whereof were delivered by your hand, as if it had been in old gold: For it was not poſſible for intire affection to be more generouſly and effectually expreſſed. I can but return thanks to you; or rather indeed ſuch an anſwer, as may better be of thoughts than words. As for that which may concern my ſelf, I hope God hath ordained me ſome ſmall time, whereby I may redeem the loſs of much. Your company was ever of contentment to me, and your abſence of grief; but now it is of grief upon grief. I beſeech you therefore make haſte hither, where you ſhall meet with as good a welcome as your own heart can wiſh.

CCXLVI. To Mr. MATTHEWS, owning his impatient attention to do him ſervice.

SIR,

IT is not for nothing that I have differed my eſſay *De amicitia*, whereby it hath expected the proof of your great friendſhip towards me: whatſoever the event be (wherein I depend upon God who ordains the effects, the inſtrument, all) yet your inceſſant thinking of me, without loſs of a moment of time, or a hint of occaſion, or a circumſtance of endeavour, or the ſtroke of a pulſe, in demonſtration of your affection to me, doth infinitely tye me to you. Commend my ſervice to my friend. The reſt to-morrow, for I hope to lodge at *London* this night, *&c.*

SECRECY I need not recommend, otherwiſe than that you may recommend it over to our friend; both becauſe it prevents oppoſition, and becauſe

it is both the King's and my Lord Marquis's nature, to love to do things unexpected.

From the Original.

CCXLVII. To the Marquis of BUCKINGHAM.*

Our very good Lord,

WE thought it our duty to impart to his Majeſty by your lordſhip, one particular of parliament buſineſs, which we hold it our part to relate, though it be too high for us to give our opinion of it.

THE officers that make out the writs of parliament addreſſed themſelves to me the Chancellor to know, whether they ſhould make ſuch a writ of ſummons to the Prince, giving me to underſtand, that there were ſome precedents of it; which I the Chancellor communicated with the reſt of the committees for parliament buſineſs; in whoſe aſſiſtance I find ſo much ſtrength that I am not willing to do any thing without them: Whereupon we (according to his Majeſty's prudent and conſtant rule, for obſerving in what reigns the precedents were) upon diligent ſearch have found as followeth.

THAT King *Edward* I. called his eldeſt ſon Prince *Edward* to his parliament in the thirtieth year of his reign, the Prince then being about the age of eighteen years; and to another parliament in the four and thirtieth year of his reign.

EDWARD III. called the *Black Prince* his eldeſt ſon to his parliament in the five and twentieth, eight and twentieth, and two and fortieth years of his reign.

HENRY IV. called Prince *Henry* to his parliaments in the firſt, third, eighth and eleventh years of his reign, the Prince being under age in the three firſt parliaments; and we find in particular, that the eighth year, the Prince ſat in the upper-houſe in days of buſineſs, and recommended a bill to the Lords.

KING *Edward* IV. called Prince *Edward* his ſon to his parliament, in anno 22 of his reign, being within age.

KING *Henry* VII. called Prince *Arthur* to his parliament in the ſeventh year of his reign, being within age.

OF King *Edward* VI. we find nothing, his years were tender, and he was not created Prince of *Wales*.

AND for Prince *Henry*, he was created Prince of *Wales*, during the laſt parliament at which he lived.

WE have thought it our duty to relate to his Majeſty what we have found, and withal that the writs of ſummons to the Prince are not much differing from the writs to the Peers; for they run *in fide & ligeanciâ*, and ſometime *in fide & homagio in quibus nobis tenemini*, and after, *conſilium nobis impenſuri circa ardua regni*. Whereby it ſhould ſeem that Princes came to parliament not only the days of ſolemnity, when they came without writ, but alſo on the days of ſitting. And if it ſhould be ſo, then the Prince may vote, and likewiſe may be of a committee of the upper houſe, and conſequently may be of a conference with the lower houſe, and the like.

THIS might have been made more manifeſt as to the preſence, and acts of the Prince in days of ſitting, if through the negligence of officers, the

journal-

journal-books of the upper houſe before the reign of King *Henry* VIII. were not all miſſing.

All which we thought it appertained to our care to look through, and faithfully to repreſent to his Majeſty: And having agreed ſecrecy amongſt our ſelves, and injoined it to the inferior Officers, we humbly deſire to know his Majeſty's pleaſure, whether he will ſilence the queſtion altogether, or make uſe of it for his ſervice, or refer it to his council, or what other courſe he will be pleaſed to take according to his great wiſdom and good pleaſure.

This we have diſpatched the ſooner, becauſe the writs of ſummons muſt have forty days diſtance from the firſt days of the parliament. And for the other parts of our accounts, his Majeſty ſhall hear from us, by the grace of God, within few days; evermore praying for his Majeſty's proſperity, and wiſhing your lordſhip much happineſs.

Your Lordſhip's to be commanded,

York-houſe, 21 Nov. 1620. Fr. Verulam, *Canc.* Edw. Coke, H. Montagu, Henry Hobarte, Ran. Crew.

CCXLVIII. To the Marquis of Buckingham.

My very good Lord,

We have theſe two days paſt, made report to the board of our parliament committee, upon relation whereof, for ſome things we provide, for ſome things we arm.

The King by my Lord Treaſurer's ſignification, did wiſely put it upon a conſult, whether the patents which we mentioned in our joint letters, were at this time to be removed, by act of council before parliament. I opined (but yet ſomewhat like *Ovid*'s miſtreſs that ſtrove, but yet as one that would be overcome) that yes. My reaſons:

That men would go better and faſter to the main errand.

That theſe things ſhould not be ſtaged, nor talked of, and ſo the leſs fuel to the fire.

That in things of this nature, wherein the council had done the like in former particulars, (which I enumerated) before parliament, near parliament, during parliament, the council were to keep their wonted centinel, as if they thought not of a parliament, to deſtroy in other patents, as concealments.

The reaſons on the other ſide were,

That it would be thought but an humouring of the parliament (being now in the calends of a parliament) and that after parliament they would come up again.

That offered graces, by reaſon, and experience, loſe their thanks.

That they are to be ſuffered to play upon ſome thing, ſince they can do nothing of themſelves.

That the chuſing out of ſome things, when perhaps their minds might be more upon other things, would do no great effect.

That former patents taken away by act of council, were upon the complaints of particular perſons; whereas now it ſhould ſeem to be done *tanquam ex officio.*

To this I yielded, though I confeſs I am yet a little doubtful to the point of *ſuavibus modis.* But it is true that the ſpeech of theſe, though in the lower

lower houſe, may be contemned; and if way be given to them (as I writ to your lordſhip of ſome of them in my laſt) it will ſort to your honour. For other things, the Lords have put them in a very good way, of which I will give expreſs account when I ſee his Majeſty, as alſo of other obſervations concerning parliament. For if his Majeſty ſaid well that when he knew the men and the elections, he would gueſs at the ſucceſs; the prognoſticks are not ſo good as I expected, occaſioned by the late occurrents abroad, and the general licentious ſpeaking of ſtate matters, of which I wrote in my laſt. God ever keep you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

16 *Dec.* 1620. FR. VERULAM, *Canc.*

From the Original.

CCXLIX. To the Lord Chancellor.*

My honourable Lord,

AS ſoon as his Majeſty's convenience would permit, I have acquainted him with the draught of the proclamation your lordſhip ſent me by his Majeſty's direction; his Majeſty liketh it in every point ſo well, both in matter and form, that he findeth no cauſe to alter a word in it, and would have your lordſhip acquaint the lords of the council with it (though he aſſureth himſelf, no man can find any thing in it to be changed) and to take order for the ſpeedy ſetting it forth. And ſo I reſt,

Yours, &c.

Theobalds, 21 *Dec.* 1620. G. BUCKINGHAM.

From the Original.

CCL. To the Lord Chancellor.*

I HAVE acquainted his Majeſty with your letter and the incloſed: the matter which his Majeſty hath been thinking upon for his ſpeech, concerneth both the points of the inſtitution of a parliament, and of the end for which this is called; yet his Majeſty thinketh it fit that ſome extract be made out of it which needeth to be but very ſhort, as he will ſhew you at his return.

Yours, &c.

Theobalds, 19 *Jan.* 1620. G. BUCKINGHAM.

From the Journal of the Houſe of Lords.

CCLI. To the Right Honourable his very good Lords, the Lords Spiritual and Temporal in the Upper-Houſe of Parliament aſſembled.

My very good Lord,

†I HUMBLY pray your lordſhips all to make a favourable and true conſtruction of my abſence. It is no feigning or fainting, but ſickneſs both of my heart and of my back, though joined with that comfort of mind,

† Deliver'd to the Houſe of Lords by the Marquis of *Buckingham*. *Camd. Ann.*

that

that perſuadeth me that I am not far from heaven, whereof I feel the firſt fruits.

And becauſe, whether I live or die, I would be glad to preſerve my honour and fame, ſo far as I am worthy; hearing that ſome complaints of baſe bribery are coming before your lordſhips: My requeſts unto your lordſhips are;

First, That you will maintain me in your good opinion, without prejudice, until my cauſe be heard.

Secondly, That in regard I have ſequeſtred my mind at this time in great part from worldly matters, thinking of my account and anſwers in a higher court; your lordſhips will give me convenient time, according to the courſe of other courts, to adviſe with my counſel, and to make my anſwer: wherein, nevertheleſs, my counſel's part will be the leaſt; for I ſhall not, by the grace of God, trick up an innocency with cavillations, but plainly and ingenuouſly (as your lordſhips know my manner is) declare what I know or remember.

Thirdly, That according to the courſe of juſtice, I may be allowed to except to the witneſſes brought againſt me, and to move queſtions to your lordſhips for their croſs examinations, and likewiſe to produce my own witneſſes for the diſcovery of the truth.

And laſtly, That if there be any more petitions of like nature, that your lordſhips would be pleaſed not to take any prejudice or apprehenſion of any number or muſter of them, eſpecially againſt a judge that makes 2000 orders and decrees in a year, (not to ſpeak of the courſes that have been taken for hunting out complaints againſt me;) but that I may anſwer them according to the ules of juſtice, ſeverally and reſpectively.

These requeſts I hope appear to your lordſhips no other than juſt. And ſo thinking my ſelf happy to have ſo noble peers and reverend prelates to diſcern of my cauſe, and deſiring no privilege of greatneſs for ſubterfuge of guiltineſs, but meaning, as I ſaid, to deal fairly and plainly with your lordſhips, and to put my ſelf upon your honours and favours. I pray God to bleſs your counſels and perſons; and reſt,

Your Lordſhip's humble ſervant,

March 19. 1620. Fr. St. Alban, *Canc.*

CCLII. To the Marquis of Buckingham.

My very good Lord,

Yesterday I know was no day; now I hope I ſhall hear from your lordſhip, who are my anchor in theſe floods. Mean while to eaſe my heart, I have written to his Majeſty the incloſed; which I pray your lordſhip to read adviſedly, and to deliver it, or not to deliver it, as you think good. God ever proſper your lordſhip.

Yours ever, &c.

March 25. 1621. Fr. St. Alban, *Canc.*

CCLIII. To the KING.

It may pleaſe your moſt excellent Majeſty,

TIME hath been when I have brought unto you *gemitum columbae* from others, now I bring it from my ſelf. I fly unto your Majeſty with the wings of a dove, which once within theſe ſeven days I thought would have carried me a higher flight. When I enter into my ſelf, I find not the materials of ſuch a tempeſt as is come upon me; I have been (as your Majeſty knoweth beſt) never author of any immoderate counſel, but always deſired to have things carried *ſuavibus modis*. I have been no avaricious oppreſſor of the people. I have been no haughty, or intolerable, or hateful man, in my converſation or carriage: I have inherited no hatred from my father, but am a good patriot born. Whence ſhould this be? For theſe are the things that uſe to raiſe diſlikes abroad.

FOR the houſe of commons, I began my credit there, and now it muſt be the place of the ſepulture thereof; and yet this parliament, upon the meſſage touching religion, the old love revived, and they ſaid, I was the ſame man ſtill, only honeſty was turned into honour.

FOR the upper houſe, even within theſe days, before theſe troubles, they ſeemed as to take me into their arms, finding in me ingenuity, which they took to be the true ſtrait line of nobleneſs, without any crooks or angles.

AND for the briberies and gifts, wherewith I am charged, when the books of hearts ſhall be opened, I hope I ſhall not be found to have the troubled fountain of a corrupt heart, in a depraved habit of taking rewards to pervert juſtice; howſoever I may be frail, and partake of the abuſes of the times.

AND therefore I am reſolved, when I come to my anſwer, not to trick up my innocency (as I writ to the lords) by cavillations, or voidances; but to ſpeak to them the language that my heart ſpeaketh to me, in excuſing, extenuating, or ingenuouſly confeſſing; praying to God to give me the grace to ſee the bottom of my faults, and that no hardneſs of heart do ſteal upon me, under ſhew of more neatneſs of conſcience, than is cauſe. But not to trouble your Majeſty any longer, craving pardon for this long mourning letter; that which I thirſt after, as the hart after the ſtreams, is, that I may know, by my matchleſs friend that preſenteth to you this letter, your Majeſty's heart (which is an *abyſſus* of goodneſs, as I am an *abyſſus* of miſery) towards me. I have been ever your man, and counted my ſelf but an uſufructuary of my ſelf, the property being yours. And now making my ſelf an oblation to do with me as may beſt conduce to the honour of your juſtice, the honour of your mercy, and the uſe of your ſervice, reſting as clay in your Majeſty's gracious hands,

March 25. 1621. FR. ST. ALBAN, *Canc.*

From the Regiſter.

CCLIV. To the KING.

It may pleaſe your moſt excellent Majeſty,

I THINK my ſelf infinitely bounden to your Majeſty, for vouchſafing me acceſs to your Royal Perſon, and to touch the hem of your garment. I ſee your Majeſty imitateth him that would not break the broken reed, nor quench

quench the ſmoking flax; and as your Majeſty imitateth Chriſt, ſo I hope aſſuredly my lords of the upper houſe will imitate you, and unto your Majeſty's grace and mercy, and next to my lords I recommend my ſelf. It is not poſſible, nor it were not ſafe, for me to anſwer particulars till I have my charge; which when I ſhall receive, I ſhall without fig-leaves or diſguiſe excuſe what I can excuſe, extenuate what I can extenuate, and ingenuouſly confeſs what I can neither clear nor extenuate. And if there be any thing which I mought conceive to be no offence, and yet is, I deſire to be informed, that I may be twice penitent, once for my fault, and the ſecond time for my error. And ſo ſubmitting all that I am to your Majeſty's Grace, I reſt,

20 *April* 1621.

CCLV. To the KING's moſt Excellent MAJESTY.

It may pleaſe your Majeſty;

IT hath pleaſed God for theſe three days paſt, to viſit me with ſuch extremity of head-ach, upon the hinder part of my head, fixed in one place, that I thought verily it had been ſome impoſthumation. And then the little phyſick that I have, told me, that either it muſt grow to a congelation, and ſo to a lethargy; or to break, and ſo to a mortal fever and ſudden death: Which apprehenſion (and chiefly the anguiſh of the pain) made me unable to think of any buſineſs. But now that the pain itſelf is aſſuaged to be tolerable, I reſume the care of my buſineſs, and therein proſtrate my ſelf again, by my letter, at your Majeſty's feet.

YOUR Majeſty can bear me witneſs, that at my laſt ſo comfortable acceſs, I did not ſo much as move your Majeſty, (by your abſolute power of pardon, or otherwiſe) to take my cauſe into your hands, and to interpoſe between the ſentence of the houſe; and according to my own deſire, your Majeſty left it to the ſentence of the houſe, and it was reported by my Lord Treaſurer.

BUT now, if not *per omnipotentiam* (as the divines ſpeak) but *per poteſtatem ſuaviter diſponentem*, your Majeſty will graciouſly ſave me from a ſentence, with the good liking of the houſe, and that cup may paſs from me, it is the utmoſt of my deſires.

THIS I move with the more belief, becauſe I aſſure myſelf, that if it be reformation that is ſought, the very taking away the ſeal, upon my general ſubmiſſion, will be as much in example, for this four hundred years, as any farther ſeverities.

THE means of this I moſt humbly leave unto your Majeſty. But ſurely I conceive, that your Majeſty opening yourſelf in this kind to the lords counſellors, and a motion from the prince, after my ſubmiſſion, and my Lord Marquis uſing his intereſt with his friends in the houſe, may effect the ſparing of a ſentence, I making my humble ſuit to the houſe for that purpoſe, joined with the delivery of the ſeal into your Majeſty's hands.

THIS is the laſt ſuit I ſhall make to your Majeſty in this buſineſs, proſtrating myſelf at your mercy-ſeat, after fifteen years ſervice, wherein I have ſerved your Majeſty in my poor endeavours with an entire heart, and as I preſumed to ſay unto your Majeſty am ſtill a virgin for matters which concern your perſon or crown; and now only craving that after eight ſteps of honour, I be not precipitated altogether.

BUT

But becauſe he that hath taken bribes is apt to give bribes, I will go farther and preſent your Majaſty with a bribe. For if your Majeſty give me peace and leiſure, and God give me life, I will preſent your Majeſty with a good hiſtory of *England*, and a better digeſt of your laws. And ſo concluding with my prayers, I reſt

Your Majeſty's afflicted, but ever devoted ſervant,

21 *Apr.* 1621. Fr. St. Alban, *Canc.*

From the Journal of the Houſe of Lords.

CCLVI. To the Right Honourable the Lords of the Parliament in the Upper-Houſe aſſembled, the humble ſubmiſſion and ſupplication of the Lord Chancellor.

It may pleaſe your Lordſhips,

I Shall humbly crave at your lordſhip's hands a benign interpretation of that which I ſhall now write; for words that come from waſted ſpirits, and an oppreſſed mind, are more ſafe in being depoſited in a noble conſtruction, than in being circled with any reſerved caution.

This being moved, and, as I hope, obtain'd, in the nature of a protection for all that I ſhall ſay; I ſhall now make into the reſt of that wherewith I ſhall at this time trouble your lordſhips, a very ſtrange entrance: for in the midſt of a ſtate of as great affliction as I think a mortal man can endure, (honour being above life) I ſhall begin with the profeſſing of gladneſs in ſome things.

The firſt is, that hereafter the greatneſs of a judge or magiſtrate, ſhall be no ſanctuary or protection of guiltineſs; which, in few words, is the beginning of a golden world.

The next, That after this example, it is like that judges will fly from any thing that is in the likeneſs of corruption, (though it were at a great diſtance,) as from a ſerpent; which tendeth to the purging of the courts of juſtice, and the reducing them to their true honour and ſplendour.

And in theſe two points, (God is my witneſs) that though it be my fortune to be the anvil, whereupon thoſe good effects are beaten and wrought, I take no ſmall comfort.

But to paſs from the motions of my heart, whereof God is only judge, to the merits of my cauſe, whereof your lordſhips are judges, under God and his lieutenant: I do underſtand there hath been heretofore expected from me ſome juſtification; and therefore I have choſen one only juſtification inſtead of all others, out of the juſtification of *Job*. For after the clear ſubmiſſion and confeſſion which I ſhall now make unto your lordſhips, I hope I may ſay and juſtify with *Job* in theſe words, *I have not hid my ſin, as did* Adam, *nor concealed my faults in my boſom.* This is the only juſtification which I will uſe.

It reſteth therefore, that without fig-leaves I do ingenuouſly confeſs and acknowledge, that having underſtood the particulars of the charge, not formally from the houſe, but enough to inform my conſcience and my memory; I find matters ſufficient and full, both to move me to deſert my defence, and to move your lordſhips to condemn and cenſure me.

Neither will I trouble your lordſhips by ſingling thoſe particulars which I think might fall off, *Quid te exempta juvat ſpinis de pluribus una?* Nei-

Hor. lib. II. Epiſt. 2. 212.

ther

ther will I prompt your lordſhips to obſerve upon the proofs, where they come not home, or the ſcruple touching the credit of the witneſſes. Neither will I repreſent to your lordſhips, how far a defence in divers things might extenuate the offence in reſpect of the time and manner of the gift, or the like circumſtances. But only leave theſe things to ſpring out of your own noble thoughts, and obſervations of the evidence and examinations themſelves; and charitably to wind about the particulars of the charge, here and there as God ſhall put into your minds, and ſo ſubmit my ſelf wholly to your piety and grace.

And now I have ſpoken to your lordſhips as judges, I ſhall ſay a few words to you as peers and prelates; humbly commending my cauſe to your noble minds, and magnanimous affections.

Your lordſhips are not ſimply judges, but parliamentary judges; you have a farther extent of arbitrary power than other courts: and if your lordſhips be not tied by ordinary courſes of courts, or precedents in points of ſtrictneſs and ſeverity; much more in points of mercy and mitigation.

And yet if any thing which I ſhall move might be contrary to your worthy ends to introduce a reformation, I ſhould not ſeek it; but herein I beſeech your lordſhips to give me leave to tell you a ſtory. *Titus Manlius* took his ſon's life for giving battle againſt the prohibition of his general: Not many years after the like ſeverity was purſued by *Papirius Curſor* the dictator, againſt *Quintus Maximus*; who being upon the point to be ſentenc'd, by the interceſſion of ſome principal perſons of the ſenate, was ſpared: whereupon *Livy* maketh this grave and gracious obſervation; *neque minus firmata eſt diſciplina militaris periculo Quinti Maximi, quam miſerabili ſupplicio Titi Manlii*; the diſcipline of war was no leſs eſtabliſhed by the queſtioning of *Quintus Maximus*, than by the puniſhing of *Titus Manlius*. And the ſame reaſon is of the reformation of juſtice; for the queſtioning of men of eminent places hath the ſame terrour, though not the ſame rigour with the puniſhment.

But my caſe ſtandeth not there; for my humble deſire is, that his Majeſty would take the ſeal into his hands, which is a great downfal, and may ſerve, I hope, in it ſelf for an expiation of my faults.

Therefore, if mercy and mitigation be in your power, and do no ways croſs your noble ends, why ſhould I not hope of your lordſhips favour and commiſeration?

Your lordſhips will be pleaſed to behold your chief pattern the King our Sovereign, a King of incomparable clemency, and whoſe heart is inſcrutable for wiſdom and goodneſs. Your lordſhips will remember that there ſat not theſe hundred years before a Prince in your houſe, and never ſuch a Prince, whoſe preſence deſerves to be made memorable by records and acts mixed of mercy and juſtice. Your lordſhips are either nobles, (and compaſſion ever beateth in the veins of noble blood) or reverend prelates, who are the ſervants of him, who would not break the bruiſed reed, nor quench the ſmoking flax. You all ſit upon one high ſtage, and therefore cannot but be more ſenſible of the changes of the world, and of the fall of any high place.

Neither will your lordſhips forget that there are *vitia temporis*, as well as *vitia hominis*; and that the beginning of reformations hath the contrary power of the pool of *Bethesda*; for that had ſtrength to cure him only that was firſt caſt in, and this hath commonly ſtrength to hurt him only that is firſt caſt in. And for my part, I wiſh it may ſtay there and go no farther.

LASTLY, I assure my self your lordships have a noble feeling of me, as a member of your own body, and one that in this very session had some taste of your loving affections; which I hope was not a lightening before the death of them, but rather a spark of that grace, which now in the conclusion will more appear.

AND therefore my humble suit to your lordships is, that my penitent submission may be my sentence, and the loss of the seal my punishment; and that your lordships will spare any farther sentence, but recommend me to his Majesty's grace and pardon for all that is past. God's Holy Spirit be among you.

Your Lordships humble servant and suppliant,

FR. ST. ALBAN, *Canc.*

April 22. 1621.

From the Register.

CCLVII. To the Prince of WALES.*

It may please your Highness,

WHEN I call to mind, how infinitely I am bound to your Highness, that stretched forth your arm to save me from a sentence; that took hold of me to keep me from being plunged deep in a sentence; that hath kept me alive in your gracious memory and mention since the sentence; pitying me as (I hope) I deserve, and valuing me far above that I can deserve: I find my words almost as barren as my fortunes, to express unto your Highness the thankfulness I owe. Therefore I can but resort to prayers to Almighty God to clothe you with his most rich and precious blessings, and likewise joyfully to meditate upon those he hath conferred upon you already; in that he hath made you to the King your father, a principal part of his safety, contentment and continuance: in your self so judicious, accomplished and graceful in all your doings, with more vertues in the buds (which are the sweetest) than have been known in a young Prince, of long time: with the realm so well beloved, so much honoured, as it is men's daily observation how nearly you approach to his Majesty's perfections; how every day you exceed your self; how compared with other Princes, which God hath ordained to be young at this time, you shine amongst them; they rather setting off your religious, moral, and natural excellencies, than matching them, though you be but a second person. These and such like meditations I feed upon, since I can yield your Highness no other retribution. And for my self, I hope by the assistance of God above (of whose grace and favour I have had extraordinary signs and effects during my afflictions) to lead such a life in the last acts thereof, as whether his Majesty employ me, or whether I live to my self, I shall make the world say that I was not unworthy such a patron.

I am much beholden to your Highness's worthy servant Sir *John Vaughan*, the sweet air, and loving usage of whose house hath already much revived my languishing spirits; I beseech your Highness, thank him for me. God ever preserve and prosper your Highness.

Your Highness's most humble and most bounden servant,

FR. ST. ALBAN.

2 *June* 1621.

From

From the Regiſter.

CCLVIII. To the KING.*

It may pleaſe your moſt excellent Majeſty,

I HUMBLY thank your Majeſty for my liberty, without which timely grant, any farther grace would have come too late. But your Majeſty that did ſhed tears in the beginning of my trouble, will, I hope, ſhed the dew of your grace and goodneſs upon me in the end. Let me live to ſerve you, elſe life is but the ſhadow of death, to

Your Majeſty's moſt devoted ſervant,

4 *June*, 1621. FR. ST. ALBAN.

From the Regiſter.

CCLIX. To the Marquis of BUCKINGHAM.*

My very good Lord,

I HEARTILY thank your lordſhip for getting me out of priſon, and now my body is out, my mind nevertheleſs will be ſtill in priſon, till I may be on my feet to do his Majeſty and your lordſhip faithful ſervice. Wherein your lordſhip, by the grace of God, ſhall find that my adverſity hath neither ſpent, nor pent my ſpirits. God proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

4 *June* 1621. FR. ST. ALBAN.

From the Regiſter.

CCLX. A Memorial for his MAJESTY's Service.*

FOR that your Majeſty is pleaſed to call for my opinion, concerning the ſacred intention you have to go on with the reformation of your courts of juſtice, and relieving the grievances of your people, which the parliament hath entred into; I ſhall never be a recuſant, though I be confined to do you ſervice.

YOUR Majeſty's ſtar-chamber next your court of parliament, is your higheſt chair. You never came upon that mount, but your garments did ſhine before you went off. It is the ſupreme court of judicature ordinary, it is an open Council; nothing I would think can be more ſeaſonable (if your other appointments permit it) than if your Majeſty will be pleaſed to come thither in perſon, the morrow after this term, (which is the time anniverſary, before the circuits and the long vacation) and there make an open declaration, that you purpoſe to purſue the reformation, which the parliament hath begun.

THAT all things go well, in all affairs, when the ordinary and extraordinary are well mingled, and tempered together. That in matters of your treaſure, you did rely upon your parliament for the extraordinary, but you were ever deſirous to do what you could by improvements, retrenchments, and the like, to ſet the ordinary in good frame, and eſtabliſhment. That you are in the ſame mind in matter of reformation of juſtice, and grievance, to aſſiſt your ſelf with the advice, and authority of parliament at times,

but mean while to go on with the ſame intentions, by your own regal power and care. That it doth well in Church-muſick when the greateſt part of the hymn is ſung by one voice, and then the choir at all times falls in ſweetly and ſolemnly, and that the ſame harmony ſorteth well in monarchy, between the King and his parliament.

That all great reformations are beſt brought to perfection by a good correſpondence between the King and his parliament, and by well ſorting the matters and the times; for in that which the King doth in his ordinary adminiſtration, and proceedings, neither can the information be ſo univerſal, nor the complaint ſo well encouraged, nor the references ſo many times free from private affection, as when the King proceedeth by parliament; on the other ſide, that the parliament wanteth time to go through with many things; beſides, ſome things are of that nature, as they are better diſcerned, and reſolved by a few, than by many.

Again, ſome things are ſo merely regal, as it is not fit to transfer them; and many things, whereof it is fit for the King to have the principal honour and thanks.

Therefore, that according to theſe differences and diſtributions, your Majeſty meaneth to go on, where the parliament hath left, and to call for the memorials, and inchoations of thoſe things, which have paſſed in both houſes, and to have them paſs the file of your council, and ſuch other aſſiſtance as ſhall be thought fit to be called reſpectively, according to the nature of the buſineſs, and to have your learned counſel ſearch precedents what the King hath done for matter of reformation, as the parliament hath informed themſelves by precedents what the parliament hath done: and thereupon that the clock be ſet, and reſolutions taken; what is to be holpen by commiſſion, what by act of council, what by proclamation, what to be prepared for parliament, what to be left wholly for parliament?

That if your Majeſty had done this before a parliament, it mought have been thought to be done to prevent a parliament, whereas, now it is to purſue a parliament, and that by this means, many grievances ſhall be anſwered by deed, and not by word; and your Majeſty's care ſhall be better than any ſtanding committee in this interim between the meetings of parliament.

For the particulars, your Majeſty in your grace and wiſdom, will conſider, how unproper and how unwarranted a thing it is, for me, as I now ſtand, to ſend for entries of parliament, or for ſearches for precedents, whereupon to ground an advice, and beſides what I ſhould now ſay, may be thought by your Majeſty (how good an opinion ſoever you have of me) much more by others, to be buſy or officious, or relating to my preſent fortunes.

From the Regiſter.

CCLXI. To the Marquis of Buckingham.*

My very good Lord,

YOUR lordſhip I know, and the King both, mought think me very unworthy of that I have been, or that I am, if I ſhould not by all means deſire to be freed from the reſtraint which debarreth me from approach to his Majeſty's perſon, which I ever ſo much loved, and admired; and ſevereth me likewiſe from all conference with your lordſhip, which is my

my ſecond comfort. Nevertheleſs, if it be conceived that it may be matter of inconvenience, or envy, my particular reſpects muſt give place, only in regard of my preſent urgent occaſions, to take ſome preſent order for the debts that preſs me moſt. I have petitioned his Majeſty to give me leave to ſtay at *London* till the laſt of *July*, and then I will diſpoſe of my abode according to the ſentence. I have ſent to the Prince to join with you in it, for though the matter ſeem ſmall, yet it importeth me much. God proſper you.

Your Lordſhip's true ſervant,

20 *June* 1621. FR. ST. ALBAN.

From the Regiſter,

CCLXII. To the Marquis of BUCKINGHAM.*

My very good Lord,

I HUMBLY thank your lordſhip for the grace and favour you did both to the meſſage, and meſſenger, in bringing Mr. *Meautys* to kiſs his Majeſty's hands, and to receive his pleaſure from himſelf. My riches in my adverſity have been, that I have had a good maſter, a good friend, and a good ſervant.

I perceive by Mr. *Meautys* his Majeſty's inclination, that I ſhould go firſt to *Gorhambury*; and his Majeſty's inclinations have ever been with me inſtead of directions. Wherefore I purpoſe, God willing, to go thither forthwith, humbly thanking his Majeſty, nevertheleſs, that he meant to have put my deſire in my petition contained, into a way, if I had inſiſted upon it; but I will accommodate my preſent occaſions as I may, and leave the times, and ſeaſons, and ways, to his Majeſty's grace and choice.

ONLY I deſire his Majeſty to bear with me if I have preſſed unſeaſonably. My letters out of the tower were *de profundis*, and the world is a priſon, if I may not approach his Majeſty, finding in my heart as I do. God preſerve and proſper his Majeſty and your lordſhip.

Your Lordſhip's faithful and bounden ſervant,

22 *June* 1621. FR. ST. ALBAN.

From the Regiſter.

CCLXIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

I THANK God I am come very well to *Gorhambury*, whereof I thought your lordſhip would be glad to hear ſometimes; my lord, I wiſh myſelf by you in this ſtirring world, not for any love to place or buſineſs, for that is almoſt gone with me, but for my love to your ſelf, which can never ceaſe in

Your Lordſhip's moſt obliged friend and true ſervant,

FR. ST. ALBAN.

BEING now out of uſe and out of ſight, I recommend my ſelf to your lordſhip's love and favour, to maintain me in his Majeſty's grace and good intention.

CCLXIV. To the KING. *

It may pleaſe your moſt excellent Majeſty,

I PERCEIVE by my noble and conſtant friend the Marquis, that your Majeſty hath a gracious inclination towards me, and taketh care of me, for fifteen years the ſubject of your favour, now of your compaſſion, for which I moſt humbly thank your Majeſty. This ſame *nova creatura* is the work of God's pardon and the King's; and ſince I have the inward ſeal of the one, I hope well of the other.

Utar, ſaith *Seneca* to his Maſter, *magnis exemplis; nec meæ fortunæ, ſed tuæ. Demoſthenes* was baniſhed for bribery of the higheſt nature, yet was recalled with honour; *Marcus Livius* was condemned for exactions, yet afterwards made conſul and cenſor. *Seneca* baniſhed for divers corruptions, yet was afterwards reſtored, and an inſtrument of that memorable *Quinquennium Neronis*. Many more. This, if it pleaſe your Majeſty, I do not ſay for appetite of employment, but for hope that if I do by my ſelf as is fit, your Majeſty will never ſuffer me to die in want or diſhonour. I do now feed myſelf upon remembrance, how when your Majeſty uſed to go a progreſs, what loving and confident charges you were wont to give me touching your buſineſs. For as *Ariſtotle* ſaith, young men may be happy by hope, ſo why ſhould not old men, and ſequeſtred men, by remembrance. God ever proſper and preſerve your Majeſty.

Your Majeſty's moſt bounden and devoted ſervant,

16 *July* 1621. FR. ST. ALBAN.

From the Original.

CCLXV. To the Lord ST. ALBAN. *

My honourable Lord,

I HAVE delivered your lordſhip's letter of thanks to his Majeſty, who accepted it very graciouſly, and will be glad to ſee your book, which you promiſed to ſend very ſhortly, as ſoon as it cometh. I ſend your lordſhip his Majeſty's warrant for your pardon, as you deſired it, but am ſorry, that in the current of my ſervice to your lordſhip, there ſhould be the leaſt ſtop of any thing; yet having moved his Majeſty, upon your ſervant's intimation, for your ſtay in *London* till *Chriſtmas*, I found his Majeſty, who hath in all other occaſions, and even in that particular already, to the diſlike of many of your own friends, ſhewed with great forwardneſs his gracious favour towards you, very unwilling to grant you any longer liberty to abide there; which being but a ſmall advantage to you, would be a great and general diſtaſte, as you cannot but eaſily conceive, to the whole ſtate. And I am the more ſorry for this refuſal of his Majeſty's, falling in a time when I was a ſuitor to your lordſhip in a particular concerning my ſelf, wherein though your ſervant inſiſted further than, I am ſure, would ever enter into your thoughts, I cannot but take it as a part of a faithful ſervant in him. But if your lordſhip, or your lady, find it inconvenient for you, to part with the houſe, I would rather provide my ſelf otherwiſe, than any way incommodate you, but will never ſlack any thing of my affection to do you ſervice; whereof, if I have not yet given good proof, I will deſire nothing more, than the fitteſt occaſion to ſhew how much I am

Your Lordſhip's faithful ſervant,

Octob. 1621. G. BUCKINGHAM.

From the Original.

CCLXVI. To the Marquis of BUCKINGHAM.*

My very good Lord,

AN unexpected accident maketh me haſten this letter to your lordſhip, before I could diſpatch Mr. *Meautys*; it is that my Lord Keeper hath ſtayed my pardon at the ſeal. But it is with good reſpect; for he ſaith it ſhall be private, and then he would forthwith write to your lordſhip, and would paſs it if he received your pleaſure; and doth alſo ſhew his reaſon of ſtay, which is, that he doubteth the exception of the ſentence of parliament is not well drawn, nor ſtrong enough, which if it be doubtful, my lord hath great reaſon. But ſure I am, both my ſelf, and the King, and your lordſhip, and Mr. Attorney, meant clearly, and I think Mr. Attorney's pen hath gone well. My humble requeſt to your lordſhip is, that for my lord's ſatisfaction Mr. Sollicitor may be joined with Mr. Attorney, and if it be ſafe enough, it may go on; if not, it may be amended. I ever reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

18 *October* 1621. FR. ST. ALBAN.

From the Original.

CCLXVII. To the Lord ST. ALBAN.*

My honourable Lord,

I HAVE brought your ſervant along to this place, in expectation of the letter from the Lord Keeper, which your lordſhip mentioneth in yours; but having not yet received it, I cannot make anſwer to the buſineſs you write of. And therefore thought fit not to detain your man here any longer, having nothing elſe to write, but that I always reſt,

Your Lordſhip's faithful friend and ſervant,

Hinchenbrook, 20 *Oct.* 1621. G. BUCKINGHAM.

From the Original.

CCLXVIII. To the Lord ST. ALBAN.*

My noble Lord,

NOW that I am provided of a houſe, I have thought it congruous to give your lordſhip notice thereof, that you may no longer hang upon the treaty, which hath been between your lordſhip and me, touching *York-houſe*; in which I aſſure your lordſhip, I never deſired to put you to the leaſt inconvenience. So I reſt

Your Lordſhip's ſervant,

G. BUCKINGHAM.

From

From the Original.

CCLXIX. To the Lord St. Alban.*

My Lord,

I Am glad your lordſhip underſtands me ſo rightly in my laſt letter, I continue ſtill in the ſame mind, for I thank God, I am ſettled to my contentment; and ſo I hope you ſhall enjoy yours, with the more, becauſe I am ſo well pleaſed in mine. And, my lord, I ſhall be very far from taking it ill, if you part with it to any elſe, judging it alike unreaſonableneſs, to deſire that which is another man's, and to bind him by promiſe or otherwiſe not to let it to another.

My lord, I will move his Majeſty to take commiſeration of your long †impriſonment, which in ſome reſpects both you and I have reaſon to think harder, than the tower; you for the help of phyſick, your parley with your creditors, your conference for your writings, and ſtudies, dealing with friends about your buſineſs, and I for this advantage to be ſometimes happy in viſiting and converſing with your lordſhip, whoſe company I am much deſirous to enjoy, as being tied by ancient acquaintance, to reſt,

Your Lordſhip's faithful friend and ſervant,

G. Buckingham.

† Reſtraint from coming within the verge of the court.

CCLXX. To the KING's moſt excellent Majesty.

It may pleaſe your Majeſty,

I Acknowledge my ſelf in all humbleneſs infinitely bounden to your Majeſty's grace and goodneſs, for that at the interceſſion of my noble and conſtant friend, my Lord Marquis, your Majeſty hath been pleaſed to grant me that which the civilians ſay is *res inaeſtimabilis*, my liberty. So that now whenever God calleth me, I ſhall not die a priſoner. Nay, farther, your Majeſty hath vouchſafed to caſt a ſecond and iterate aſpect of your eye of compaſſion upon me, in referring the conſideration of my broken eſtate to my good Lord the Treaſurer, which as it is a ſingular bounty in your Majeſty, ſo I have yet ſo much left of a late commiſſioner of your treaſure, as I would be ſorry to ſue for any thing that might ſeem immodeſt. Theſe your Majeſty's great benefits, in caſting your bread upon the waters, (as the ſcripture ſaith) becauſe my thanks cannot any ways be ſufficient to attain, I have raiſed your progenitor, of famous memory, (and now, I hope, of more famous memory than before) King *Henry* VII, to give your Majeſty thanks for me; which work, moſt humbly kiſſing your Majeſty's hands, I do preſent. And becauſe in the beginning of my trouble, when in the midſt of the tempeſt, I had a kenning of the harbour, which I hope now by your Majeſty's favour I am entring into, I made a tender to your Majeſty of two works, An hiſtory of *England*, and A digeſt of your laws; as I have (by a figure of *pars pro toto*) performed the one; ſo I have herewith ſent your Majeſty, by way of an epiſtle, a new offer of the other. But my deſire is farther, if it ſtand with your Majeſty's good pleaſure, ſince now my ſtudy is my exchange, and my pen my factor, for the uſe of my talent; that your Majeſty (who is a great maſter in theſe things) would be pleaſed to appoint me ſome taſk to write, and that I ſhall take for an oracle.

oracle. And becauſe my Inſtauration (which I eſteem my great work, and do ſtill go on with ſilence) was dedicated to your Majeſty; and this hiſtory of King *Henry* VII. to your lively and excellent image the Prince: if now your Majeſty will be pleaſed to give a theme to dedicate to my Lord of *Buckingham*, whom I have ſo much reaſon to honour, I ſhould with more alacrity embrace your Majeſty's direction than my own choice. Your Majeſty will pardon me for troubling you thus long. God evermore preſerve and proſper you.

Your Majeſty's poor beadſman moſt devoted,

Gorhambury, 20 *Mar.* 1621. FR. ST. ALBAN.

CCLXXI. To the Right Honourable his very good Lord, the Lord Marquis of BUCKINGHAM, High Admiral of *England.*

My very good Lord,

THESE main and real favours which I have lately received from your good lordſhip, in procuring my liberty, and a reference of the conſideration of my releaſe, are ſuch, as I now find that in building upon your lordſhip's noble nature and friendſhip, I have built upon the rock, where neither winds or waves can cauſe overthrow. I humbly pray your lordſhip to accept from me ſuch thanks as ought to come from him whom you have much comforted in fortune, and much more comforted in ſhewing your love and affection to him; of which alſo I have heard by my Lord of *Falkland*, Sir *Edward Sackville*, Mr. *Matthews*, and otherwiſe.

I HAVE written, as my duty was, to his Majeſty thanks touching the ſame, by the letter I here put into your noble hands.

I HAVE made alſo, in that letter, an offer to his Majeſty of my ſervice, for bringing into better order and frame the laws of *England:* The declaration whereof I have left with Sir *Edward Sackville*, becauſe it were no good manners to clog his Majeſty, at this time of triumph and recreation, with a buſineſs of this nature; ſo as your lordſhip may be pleaſed to call for it to Sir *Ed. Sackville* when you think the time ſeaſonable.

I AM bold likewiſe to preſent your lordſhip with a book of my hiſtory of King *Henry* the ſeventh. And now that in ſummer was twelve months, I dedicated a book to his Majeſty; and this laſt ſummer, this book to the Prince; your lordſhip's turn is next, and this ſummer that cometh (if I live to it) ſhall be your's. I have deſired his Majeſty to appoint me the taſk, otherwiſe I ſhall uſe my own choice; for this is the beſt retribution I can make to your lordſhip. God proſper you. I reſt,

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury, this 20th of *March* 1621. FR. ST. ALBAN.

CCLXXII. To the KING.

It may pleaſe your moſt excellent Majeſty,

IN the midſt of my miſery, which is rather aſſuaged by remembrance, than by hope; my chiefeſt worldly comfort is, to think that ſince the time I had the firſt vote of the commons houſe of parliament for commiſſioner of the union, until the time that I was this laſt parliament choſen by both houſes for their meſſenger to your Majeſty in the petition of religion, (which

two were my firſt and laſt ſervices) I was evermore ſo happy as to have my poor ſervices graciouſly accepted by your Majeſty, and likewiſe not to have had any of them miſcarry in my hands. Neither of which points I can any ways take to my ſelf, but aſcribe the former to your Majeſty's goodneſs, and the later to your prudent directions; which I was ever careful to have and keep. For as I have often ſaid to your Majeſty, I was towards you but as a bucket and a ciſtern, to draw forth and conſerve, whereas your ſelf was the fountain. Unto this comfort of nineteen years proſperity, there ſucceeded a comfort even in my greateſt adverſity, ſomewhat of the ſame nature; which is, that in thoſe offences wherewith I was charged, there was not any one that had ſpecial relation to your Majeſty, or any your particular commandments. For as towards Almighty God, there are offences againſt the firſt and ſecond table, and yet all againſt God; ſo with the ſervants of Kings there are offences more immediate againſt the Sovereign; although all offences againſt law are alſo againſt the King. Unto which comfort there is added this circumſtance, that as my faults were not againſt your Majeſty, otherwiſe than as all faults are; ſo my fall was not your Majeſty's act, otherwiſe than as all acts of juſtice are yours. This I write not to inſinuate with your Majeſty, but as a moſt humble appeal to your Majeſty's gracious remembrance, how honeſt and direct you have ever found me in your ſervice; whereby I have an aſſured belief, that there is in your Majeſty's own princely thoughts, a great deal of ſerenity and clearneſs towards me your Majeſty's now proſtrate and caſt down ſervant.

NEITHER (my moſt gracious Sovereign) do I by this mention of my ſervices, lay claim to your princely grace and bounty, though the privilege of calamity doth bear that form of petition. I know well, had they been much more, they had been but my bounden duty. Nay, I muſt alſo confeſs, that they were from time to time far above my merit, over and ſuper-rewarded by your Majeſty's benefits which you heaped upon me. Your Majeſty was and is that maſter to me, that raiſed and advanced me nine times; thrice in dignity, and ſix times in office. The places indeed were the painfulleſt of all your ſervices; but then they had both honour and profits. And the then profits might have maintained my now honour, if I had been wiſe: neither was your Majeſty's immediate liberality wanting towards me in ſome gifts, if I may hold them. All this I do moſt thankfully acknowledge, and do herewith conclude, that for any thing ariſing from my ſelf to move your eye of pity towards me, there is much more in my preſent miſery, than in my paſt ſervices; ſave that the ſame your Majeſty's goodneſs, that may give relief to the one, may give value to the other.

AND indeed, if it may pleaſe your Majeſty, this theme of my miſery is ſo plentiful, as it need not be coupled with any thing elſe. I have been ſome body by your Majeſty's ſingular and undeſerved favour, even the prime officer of your kingdom; your Majeſty's arm hath been often laid over mine in council, when you preſided at the table; ſo near I was. I have born your Majeſty's image in metal, much more in heart; I was never in nineteen years ſervice chidden by your Majeſty, but contrariwiſe often over-joyed, when your Majeſty would ſometimes ſay, I was a good huſband for you, though none for my ſelf: ſometimes, that I had a way to deal in buſineſs, *ſuavibus modis*, which was the way which was moſt according to your own heart: and other moſt gracious ſpeeches of affection and truſt, which I feed on to this day. But why ſhould I ſpeak of theſe things which are now vaniſhed, but only the better to expreſs the downfal?

For now it is thus with me; I am a *year and half old in misery; though I must ever acknowledge, not without some mixture of your Majesty's grace and mercy; for I do not think it possible, that any one whom you once loved should be totally miserable. Mine own means, through my own improvidence, are poor and weak, little better than my father left me. The poor things that I have had from your Majesty, are either in question, or at courtesy. My dignities remain marks of your past favour, but burdens of my present fortune. The poor remnants which I had of my former fortunes, in plate or jewels, I have spread upon poor men unto whom I owed, scarce leaving my self a convenient subsistence. So as to conclude, I must pour out my misery before your Majesty, so far as to say, *si deseris tu, perimus.*

* Therefore this was wrote near the middle of 1622.

But as I can offer to your Majesty's compassion little arising from my self to move you, except it be my extreme misery, which I have truly laid open; so looking up to your Majesty's own self, I should think I committed *Cain*'s fault, if I should despair. Your Majesty is a King whose heart is as unscrutable for secret motions of goodness, as for depth of wisdom. You are creator like, active and not destructive. You are the prince in whom hath been ever noted an aversation against any thing that savoured of an hard heart; as, on the other side, your princely eye was wont to meet with any motion that was made on the relieving part. Therefore as one that hath had the happiness to know your Majesty near hand, I have (most gracious Sovereign) faith enough for a miracle, and much more for a grace, that your Majesty will not suffer your poor creature to be utterly defaced, nor blot that name quite out of your book, upon which your sacred hand hath been so oft for the giving him new ornaments and additions.

Unto this degree of compassion, I hope God above (of whose mercy towards me, both in my prosperity and adversity, I have had great testimonies and pledges, though my own manifold and wretched unthankfulness might have averted them) will dispose your princely heart, already prepared to all piety. And why should I not think, but that that thrice noble prince, who would have pulled me out of the fire of a sentence, will help to pull me (if I may use that homely phrase) out of the mire of an abject and sordid condition in my last days: and that excellent favourite of yours, (the goodness of whose nature contendeth with the greatness of his fortune; and who counteth it a prize, a second prize, to be a good friend, after that prize which he carrieth to be a good servant) will kiss your hands with joy for any work of piety you shall † do for me. And as all commiserable persons (especially such as find their hearts void of all malice) are apt to think that all men pity them, so I assure my self that the lords of your council, who out of their wisdom and nobleness, cannot but be sensible of human events, will in this way which I go, for the relief of my estate, further and advance your Majesty's goodness towards me. For there is, as I conceive, a kind of fraternity between great men that are, and those that have been, being but the several tenses of one verb; nay, I do farther presume, that both houses of parliament will love their justice the better, if it end not in my ruin: For I have been often told, by many of my lords, as it were in the way of excusing the severity of the sentence, that they knew they left me in good hands. And your Majesty knoweth well, I have been all my life long acceptable to those assemblies, not by flattery, but by moderation, and by honest expressing of a desire to have all things go fairly and well.

† Vouchsafe to express towards me. *Matth.*

But, if it may please your Majesty (for saints I shall give them reverence, but no adoration, my address is to your Majesty, the fountain of goodness;)

your

your Majeſty ſhall by the grace of God, not feel that in gift, which I ſhall extremely feel in help; for my deſires are moderate, and my courſes meaſured to a life orderly and reſerved, hoping ſtill to do your Majeſty honour in my way. Only I moſt humbly beſeech your Majeſty to give me leave to conclude with thoſe words which neceſſity ſpeaketh: help me, (dear ſovereign lord and maſter) and pity me ſo far, as that I that have born a bag, be not now in my age forced in effect to bear a wallet; nor that I that deſire to live to ſtudy, may not be driven to ſtudy to live†. I moſt humbly crave pardon of a long letter, after a long ſilence. God of heaven ever bleſs, preſerve, and proſper your Majeſty.

Your Majeſty's poor ancient ſervant and beadſman,

FR. ST. ALBAN.

† Altho' the ſubject matter of this and ſome other letters of the like nature, hath given me occaſion to make ſome remarks thereon already; yet I cannot omit taking notice in this place, of what the learned Monſieur *Le Clerc* hath obſerved in the twelfth chapter of his Reflections upon good and bad fortune. Where, in his diſcourſe of liberality, and the obligations that are upon princes, *&c.* to extend their bounty to learned men, in reſpect of the benefit the world receives from them; he expreſſes his ſenſe of the honour which was due to the memory of thoſe who aſſiſted *Eraſmus* and *Grotius*, and his reſentment of the neglect of K. *James*, for deſerting the Lord *Bacon*: One cannot read, ſaith he, without indignation, that which is reported of the famous Chancellor of *England*, *Francis Bacon*, whom the King ſuffer'd to languiſh in poverty, whilſt he preferr'd worthleſs perſons to his diſhonour. A little before his death this learned man writ to that Prince a bemoaning letter; and then cites this moving concluſion out of *Howell*'s letters; which though that author thought it argued a little abjection of ſpirit in my Lord *Bacon*; yet Monſieur *Le Clerc* thinks it ſhew'd a much lower in the King, to permit ſo able a man to lie under the neceſſity of making ſo ſad a requeſt, and yet withal to afford no relief. *Stephens.*

CCLXXIII. To Mr. MATTHEWS, employing him to do a good office with a great man.

SIR,

I HAVE received your letter, wherein you mention ſome paſſages at large, concerning the lord you know of. You touched alſo that point in a letter which you wrote upon my lord's going over, which I anſwered, and am a little doubtful, whether mine ever came to your hands. It is true, that I wrote a little ſullenly therein; how I conceived that my lord was a wiſe man in his own way; and perhaps thought it fit for him to be out with me; for at leaſt I found no cauſe thereof in my ſelf. As for the latter of theſe points, I am of the ſame judgment ſtill; but for the former, I perceive by what you write, that it is merely ſome miſunderſtanding of his: and I do a little marvel at the inſtance, which had relation to that other crabbed man; for I conceived that both, in paſſing that book, and (as I remember) two more, immediately after my lord's going over, I had ſhewed more readineſs than many times I uſe in like caſes. But to conclude, no man hath thought better of my lord than I have done. I know his virtues, and namely, that he hath much greatneſs of mind, which is a thing almoſt loſt amongſt men: Nor can any body be more ſenſible and remembring than I am of his former favours; ſo that I ſhall be moſt glad of his friendſhip. Neither are the paſt occaſions in my opinion, ſuch as need either reparation or declaration; but may well go under the title of nothing. Now I had rather you dealt between us than any body elſe, becauſe you are no way drenched in any man's humour. Of other things at another time; but this I was forward to write in the midſt of more buſineſs than ever I had.

CCLXXIV.

CCLXXIV. To the Lord DIGBY, on his going to *Spain*.

My very good Lord,

I Now only ſend my beſt wiſhes to follow you at ſea and land, with due thanks for your late great favours. God knows whether the length of your voyage will not exceed the ſize of my hour-glaſs: But whilſt I live, my affection to do your lordſhip ſervice ſhall remain quick under the aſhes of my fortune.

CCLXXV.

SIR,

IN this ſolitude of friends, which is the baſe court of adverſity, where no body almoſt will be ſeen ſtirring, I have often remembred this *Spaniſh* ſaying, *amor ſin fin, no tiene fin* †. This bids me make choice of your friend and mine, for his noble ſuccours; not now towards the aſpiring, but only the reſpiring of my fortunes. I, who am a man of books, have obſerved, that he hath both the magnanimity of the old *Romans*, and the cordiality of the old *Engliſh*; and withal, I believe, he hath the wit of both: ſure I am, that for my ſelf I have found him in both my fortunes, to eſteem me ſo much above my juſt value, and to love me ſo much above the poſſibility of deſerving, or obliging on my part, as if he were a friend created and reſerved for ſuch a time as this. You know what I have to ſay to the great lord, and I conceive it cannot paſs ſo fitly to him by the mouth of any, as of this gentleman; and therefore do your beſt (which I know will be of power enough) to engage him both in the ſubſtance and to the ſecrecy of it: for I can think of no man but your ſelf, to be uſed by me in this, who are ſo private, ſo faithful, and ſo diſcreet a friend to us both; as on the other ſide, I dare ſwear he is, and know my ſelf to be as true to you as your own heart.

† Love without ends hath no end, was a ſaying of *Gondomar* the *Spaniſh* Ambaſſador; meaning thereby, that if it were begun not upon particular ends, it would laſt. *Bacon*'s *Apoph.* 67. Vol. III. p. 269.

CCLXXVI. An Expoſtulation to the Marquis of BUCKINGHAM.

My very good Lord,

YOUR lordſhip will pardon me, if partly in the freedom of adverſity, and partly of former friendſhip, (the ſparks whereof cannot but continue) I open my ſelf to your lordſhip, and deſire alſo your lordſhip to open your ſelf to me. The two laſt acts which you did for me, in procuring the releaſement of my fine, and my *quietus eſt*, I acknowledge were effects real and material of your love and favour; which, as to my knowledge, it never failed in my proſperity, ſo in theſe two things it ſeems not to have turned with the wheel. But the extent of theſe two favours is not much more than to keep me from perſecution. For any thing farther, which might tend to my comfort and aſſiſtance, as I cannot ſay to my ſelf, that your lordſhip hath forſaken me; ſo I ſee not the effects of your undeſerved, yea undeſired profeſſions and promiſes; which being made to a perſon in affliction, hath the nature, after a ſort, of vows. But that which moſt of all makes me doubt of a change or cooling in your lordſhip's affection towards me, is, that be-

ing twice now at *London*, your lordſhip did not vouchſafe to ſee me; though by meſſages you gave me hope thereof, and the later time I had begg'd it of your lordſhip.

The cauſe of change may either be in my ſelf or your lordſhip. I ought firſt to examine my ſelf, which I have done; and God is my witneſs, I find all well, and that I have approved my ſelf to your lordſhip a true friend, both in the watery trial of proſperity, and in the fiery trial of adverſity. If your lordſhip take any inſatisfaction touching the houſe, I humbly pray you think better of it. For that motion to me was a ſecond ſentence more grievous than the firſt, as things then ſtood, and do yet ſtand: for it ſentenced me to have loſt both in my own opinion, and much more in the opinion of others, that which was ſaved to me, almoſt only, in the former ſentence; and which was more dear to me than all that which was taken from me, which is your lordſhip's love and favour. For had it not been for that bitter circumſtance, your lordſhip knows, that you might have commanded my life, and all that is mine. But ſurely it could not be that, nor any thing in me, which wrought the change. It is likely on the other part, that though your lordſhip in your nature I know to be generous and conſtant, yet I being now become out of ſight, and out of uſe, your lordſhip having a flood of new friends, and your ears poſſeſſed perhaps by ſuch as would not leave room for an old; your lordſhip may, even by courſe of the world, and the over-bearing of others, be turned from me; and it were almoſt a miracle if it ſhould be otherwiſe. But yet, becauſe your lordſhip may ſtill have ſo heroical a ſpirit, as to ſtand out in all theſe violent aſſaults, which might have alienated you from your friend; my humble ſuit to your lordſhip is, that remembring our former friendſhip, which began with your beginnings, and ſince that time hath never failed on my part, your lordſhip would deal clearly with me, and let me know, whether I continue in your favour or no; and whether in thoſe poor requeſts, which I may yet make to his Majeſty (whoſe true ſervant I ever was and am) for the tempering of my miſery, I may preſume to uſe your lordſhip's favour and help, as I have done; for otherwiſe it were a kind of ſtupidneſs in me, and a great trouble alſo to your lordſhip, for me not to diſcern the change, for your lordſhip to have an importuner, inſtead of a friend and a ſuitor. Though howſoever, if your lordſhip ſhould never think of me more, yet in reſpect of your former favours, which cannot altogether be made void, I muſt remain, *&c.*

From the Original.

CCLXXVII. To the Lord St. Alban.*

My Lord,

I Have diſpatched the buſineſs your lordſhip recommended to me, which I ſend your lordſhip here incloſed, ſigned by his Majeſty, and have likewiſe moved him for your coming to kiſs his hand, which he is pleaſed you ſhould do at *Whitehall* when he returneth next thither. In the mean time I reſt,

Your Lordſhip's faithful friend and ſervant,

Newmarket, 13 *Nov.* 1622. G. Buckingham.

I

I WILL give order to my ſecretary to wait upon Sir *John Suckling* about your other buſineſs.

Endorſed by the Lord *St. Alban*'s hand.

My Lord of Bucks *touching my warrant and acceſs.*

CCLXXVIII. To the Marquis of BUCKINGHAM.*

Excellent Lord,

THOUGH I have troubled your lordſhip with many letters, oftner than I think I ſhould, (ſave that affection keepeth no account) yet upon the repair of Mr. *Matthew*, a gentleman ſo much your lordſhip's ſervant, and to me another my ſelf, as your lordſhip beſt knoweth, you would not have thought me a man alive, except I had put a letter into his hand, and withal, by ſo faithful and approved a man, commended my fortunes afreſh unto your lordſhip.

MY lord, to ſpeak my heart to your lordſhip, I never felt my misfortunes ſo much as now: not for that part which may concern my ſelf, who profit (I thank God for it) both in patience, and in ſettling mine own courſes; but when I look abroad and ſee the times ſo ſtirring, and ſo much diſſimulation and falſhood, baſeneſs and envy in the world, and ſo many idle clocks going in men's heads, then it grieveth me much, that I am not ſometimes at your lordſhip's elbow, that I might give you ſome of the fruits of the careful advice, modeſt liberty, and true information of a friend that loveth your lordſhip as I do. For though your lordſhip's fortunes be above the thunder and ſtorms of inferiour regions; yet nevertheleſs, to hear the wind and not to feel it, will make one ſleep the better.

MY good lord, ſomewhat I have been, and much I have read; ſo that few things that concern ſtates or greatneſs, are new caſes unto me: and therefore I hope I may be no unprofitable ſervant to your lordſhip. I remember the King was wont to make a character of me, far above my worth, *that I was not made for ſmall matters*; and your lordſhip would ſometimes bring me from his Majeſty that *Latin* ſentence *de minimis non curat lex:* and it hath ſo fallen out, that ſince my retiring, times have been fuller of great matters than before; wherein perhaps if I had continued near his Majeſty, he might have found more uſe of my ſervice, if my gift lay that way: but that is but a vain imagination of mine. True it is, that as I do not aſpire to uſe my talent in the King's great affairs; yet for that which may concern your lordſhip, and your fortune, no man living ſhall give you a better account of faith, induſtry, and affection, than I ſhall. I muſt conclude with that which gave me occaſion of this letter, which is Mr. *Matthew*'s employment to your lordſhip in thoſe parts, wherein I am verily perſuaded your lordſhip ſhall find him a wiſe and able gentleman, and one that will bend his knowledge of the world (which is great) to ſerve his Majeſty, and the Prince, and in eſpecial your lordſhip. So I reſt,

Your Lordſhip's moſt obliged and faithful ſervant,

Gray's-Inn, this 18 *April*, 1623. FR. ST. ALBAN.

CCLXXIX. To

CCLXXIX. To the Marquis of Buckingham.

My very good Lord,

THOUGH I returned an anſwer to your lordſhip's laſt honourable and kind letter, by the ſame way by which I received it; yet I humbly pray your lordſhip to give me leave to add theſe few lines. My lord, as God above is my witneſs, that I ever have loved and honoured your lordſhip, as much, I think, as any ſon of *Adam* can love or honour any thing that is a ſubject; and do ſtill continue in as hearty and ſtrong wiſhes of felicity to be heaped and fixed upon you as ever: ſo yet I proteſt, that at this time, as low as I am, I had rather ſojourn the reſt of my life in a college in *Cambridge*, than recover a good fortune by any other than your ſelf. But now to recover your ſelf to me (if I have you not already) or to eaſe your lordſhip in any buſineſs of mine, wherein your lordſhip would not ſo fully appear, or to be made partaker of your favours, in the way that you like beſt; I would uſe any man who were your lordſhip's friend. *Secondly*, If in any thing of my former letters I have given your lordſhip any diſtaſte, either by the ſtyle of them, or any particular paſſage in them, I humbly pray your lordſhip's benign conſtruction and pardon. I confeſs it is my fault, though yet it be ſome happineſs to me withal, that I many times forget my adverſity; but I ſhall never forget to be, *&c.*

From the Original.

CCLXXX. To the Duke of Buckingham.*

Excellent Lord,

HOW much I rejoice in your grace's ſafe return, you will eaſily believe, knowing how well I love you, and how much I need you. There be many things in this journey both in the felicity and in the carriage thereof, that I do not a little admire, and wiſh your grace may reap more and more fruits in continuance anſwerable to the beginnings. My ſelf have ridden at anchor all your grace's abſence, and my cables are now quite worn. I had from Sir *Toby Mathew* out of *Spain*, a very comfortable meſſage, that your grace had ſaid, I ſhould be the firſt that you would remember in any great favour after your return; and now coming from court, he telleth me he had commiſſion from your lordſhip to confirm it: for which I humbly kiſs your hands.

My lord, do ſome good work upon me, that I may end my days in comfort, which nevertheleſs cannot be complete except you put me in ſome way to do your noble ſelf ſervice; for I muſt ever reſt,

Your Grace's moſt obliged and faithful ſervant,

12 *Oct.* 1623. Fr. St. Alban.

I have written to his Highneſs, and had preſented my duty to his Highneſs to kiſs his hands at *York-houſe*, but that my health is ſcarce yet confirmed.

From

From the Original.

CCLXXXI. To the Lord St. Alban.*

My Lord,

THE aſſurance of your love makes me eaſily believe your joy at my return; and if I may be ſo happy as by the credit of my place, to ſupply the decay of your cables, I ſhall account it one of the ſpecial fruits thereof. What Sir *Toby Mathew* hath delivered on my behalf, I will be ready to make good, and omit no opportunity that may ſerve for the endeavours of,

Your Lordſhip's faithful friend and ſervant,

Royſton, 14 *Oct.* 1623. G. Buckingham.

From the Original.

CCLXXXII. To the Duke of Buckingham.*

Excellent Lord,

I Send your Grace for a *parabien*, a book of mine, written firſt and dedicated to his Majeſty in *Engliſh*, and now tranſlated into *Latin* and enriched. After his Majeſty and his Highneſs, your Grace is ever to have the third turn with me. Vouchſafe of your wonted favour to preſent alſo the King's book to his Majeſty. The Prince's I have ſent to Mr. *Endimion Porter*. I hope your Grace (becauſe you are wont to diſable your *Latin*) will not ſend your book to the *Conde d'Olivares*, becauſe he was a deacon; for I underſtand by one (that your Grace may gueſs whom I mean) that the *Conde* is not rational, and I hold this book to be very rational. Your Grace will pardon me to be merry, however the world goeth with me. I ever reſt,

Your Grace's moſt faithful and obliged ſervant,

Gray's Inn, this 22d *October* 1623. Fr. St. Alban.

I have added a begging poſtſcript in the King's letter; for, as I writ before, my cables are worn out, my hope of tackling is by your lordſhip's means. For me and mine, I pray command.

From the Original.

CCLXXXIII. To the Lord St. Alban.*

My Lord,

I Give your lordſhip many thanks for the *parabien* you have ſent me; which is ſo welcome unto me, both for the author's ſake and for the worth of it ſelf, that I cannot ſpare a work, of ſo much pains to your lordſhip and value to me, unto a man of ſo little reaſon and leſs art; who, if his ſkill in languages be no greater than I found it in argument, may, perhaps, have as much need of an interpreter (for all his deaconry) as my ſelf; and whatſoever mine ignorance is in the tongue, yet this much I underſtand in the book, that it is a noble monument of your love, which I will entail to my poſterity, who, I hope, will both reap the fruit of the work, and honour the memory of

the author. The other book I delivered to his Majeſty, who is tied here by the feet longer than he purpoſed to ſtay.

For the buſineſs your lordſhip wrote of in your other letters, I am ſorry I can do you no ſervice, having engaged my ſelf to Sir *William Becher* before my going into *Spain*, ſo that I cannot free my ſelf, unleſs there were means to give him ſatisfaction. But I will ever continue

Your Lordſhip's aſſured friend and ſervant,

Hinchenbrook, 27 *Oct.* 1623. G. Buckingham.

From the Original.

CCLXXXIV. To the Lord St. Alban. *

My honourable Lord,

I Have deliver'd your lordſhip's letter and your book to his Majeſty, who hath promiſed to read it over: I wiſh I could promiſe as much for that which you ſent me, that my underſtanding of that language might make me capable of thoſe good fruits, which I aſſure my ſelf by an implicit faith proceed from your pen. But I will tell you in good *Engliſh*, with my thanks for your book, that I ever reſt,

Your Lordſhip's faithful friend and ſervant,

Hinchenbrook, 29 *Oct.* 1623. G. Buckingham.

From the Original.

CCLXXXV. To the Duke of Buckingham. *

Excellent Lord,

I Send Mr. *Parker* to have ready, according to the ſpeech I had with your Grace, my two ſuits to his Majeſty, the one for a full pardon, that I may die out of a cloud; the other for the tranſlation of my honours after my deceaſe. I hope his Majeſty will have compaſſion on me, as he promiſed me he would. My heart telleth me that no man hath loved his Majeſty and his ſervice more entirely, and love is the law and the prophets. I ever reſt,

Your Grace's moſt obliged and faithful ſervant,

25 *Nov.* 1623. Fr. St. Alban.

From the Original.

CCLXXXVI. To the Lord St. Alban. *

My honourable Lord,

I Have received your lordſhip's letter, and have been long thinking upon it, and the longer the leſs able to make anſwer unto it. Therefore if your lordſhip would be pleaſed to ſend any underſtanding man unto me, to whom I may in diſcourſe open my ſelf, I will by that means ſo diſcover my heart with all freedom (which were too long to do by letter, eſpecially in this time of parliament buſineſs) that your lordſhip ſhall receive ſatisfaction. In the mean time I reſt,

Your Lordſhip's faithful ſervant,

Royſton, 16 *December.* G. Buckingham.

From

From the Original.

CCLXXXVII. To the Lord St. Alban.*

My Lord,

I Have moved his Majeſty in your ſuit, and find him very gracious inclined to grant it; but he deſireth firſt to know from my Lord Treaſurer his opinion and the value of it: to whom I have written to that purpoſe this incloſed letter, and would wiſh your lordſhip to ſpeak with him your ſelf for his favour and furtherance therein; and for my part I will omit nothing that appertaineth to

Your Lordſhip's faithful friend and ſervant,

Newmarket, 28th of *January* 1623. G. Buckingham.

From the Original.

CCLXXXVIII. To the Duke of Buckingham.*

Excellent Lord,

I Have received the warrant, not for land but for the money, which if it may be ſpeedily ſerved, is ſure the better; for this I humbly kiſs your Grace's hands. But becauſe the exchequer is thought to be ſomewhat barren, although I have good affiance of Mr. Chancellor, yet I hold it very eſſential (and therein I moſt humbly pray your Grace's favour) that you would be pleaſed by your letter to recommend to Mr. Chancellor the ſpeedy iſſuing of the money by this warrant, as a buſineſs whereof your Grace hath an eſpecial care; the rather for that I underſtand from him, there be ſome other warrants for money to private ſuitors at this time on foot. But your Grace may be pleaſed to remember this difference: That the other are mere gifts; this of mine is a bargain, with an advance only.

I moſt humbly pray your Grace likewiſe to preſent my moſt humble thanks to his Majeſty. God ever guide you by the hand. I always reſt,

Your faithful and more and more obliged ſervant,

Gray's-Inn, this 17th of *November*, 1624. Fr. St. Alban.

I moſt humbly thank your Grace for your Grace's favour to my honeſt deſerving ſervant.

From the Original,

CCLXXXIX. To the Lord St. Alban.*

My noble Lord,

The hearty affection I have borne to your perſon and ſervice, hath made me ever ambitious to be a meſſenger of good news to you, and an eſchewer of ill; this hath been the true reaſon why I have been thus long in anſwering you, not any negligence in your diſcreet modeſt ſervant, you ſent with your letter, nor his who now returns you this anſwer, ofttimes given me by your maſter and mine; who though by this may ſeem not to ſatisfy your deſert and expectation, yet take the word of a friend who will never fail you, hath a tender care of you, full of a freſh memory of your by-paſt

ſervice.

ſervice. His Majeſty is but for the preſent, he ſays, able to yield unto the three years advance, which if you pleaſe to accept, you are not hereafter the farther off from obtaining ſome better teſtimony of his favour worthier both of him and you, though it can never be anſwerable to what my heart wiſhes you, as

Your Lordſhip's humble ſervant,

G. BUCKINGHAM.

CCXC. To the Lord † Treaſurer MARLBOROUGH, expoſtulating about his unkindneſs and injuſtice.

My Lord,

I HUMBLY entreat your lordſhip, and (if I may uſe the word) adviſe you to make me a better anſwer. Your lordſhip is intereſted in honour, in the opinion of all them who hear how I am dealt with; if your lordſhip malice me for ſuch a cauſe, ſurely it was one of the juſteſt buſineſſes that ever was in chancery. I will avouch it; and how deeply I was tempted therein, your lordſhip knows beſt. Your lordſhip may do well, in this great age of yours, to think of your grave, as I do of mine; and to beware of hardneſs of heart. And as for fair words, it is a wind, by which neither your lordſhip, nor any man elſe, can ſail long. Howſoever, I am the man who will give all due reſpects and reverence to your great place, *&c.*

† The Lord *Marlborough* was made Treaſurer 22 *Dec.* 1624. 22 *Jac.*

CCXCI. To the KING.

Moſt gracious and dread Sovereign,

BEFORE I make my petition to your Majeſty, I make my prayers to God above, *pectore ab imo*, that if I have held any thing ſo dear as your Majeſty's ſervice; nay, your heart's eaſe, and your honour's, I may be repulſed with a denial: But if that hath been the principal with me, that God, who knoweth my heart, would move your Majeſty's royal heart to take compaſſion of me, and to grant my deſire.

I proſtrate my ſelf at your Majeſty's feet, I, your ancient ſervant, now ſixty-four years old in age, and three years five months old in miſery. I deſire not from your Majeſty, means, nor place, nor employment, but only after ſo long a time of expiation, a complete and total remiſſion of the ſentence of the upper houſe, to the end that blot of ignominy may be removed from me, and from my memory with poſterity; that I die not a condemned man, but may be to your Majeſty, as I am to God, *nova creatura*. Your Majeſty hath pardoned the like to Sir *John Bennet*, between whoſe caſe and mine, (not being partial with my ſelf, but ſpeaking out of the general opinion) there was as much difference, I will not ſay as between black and white, but as between black and grey, or aſh-coloured *; look therefore down, dear Sovereign, upon me alſo in pity. I know your Majeſty's heart is inſcrutable for goodneſs; and my Lord of *Buckingham* was wont to tell me, you were the beſt natured man in the world; and it's God's property, that thoſe he

* Sir *John Bennet*, judge of the prerogative court, was in the year 1621 accuſed, convicted, and cenſured in parliament for taking of bribes, and committing ſeveral miſdemeanors relating to his office.

hath

hath loved, he loveth to the end. Let your Majeſty's grace, in this my deſire, ſtream down upon me, and let it be out of the fountain and ſpring-head, and *ex mero motu*, that living or dying, the print of the goodneſs of King *James* may be in my heart, and his praiſes in my mouth. This my moſt humble requeſt granted, may make me live a year or two happily; and denied, will kill me quickly. But yet the laſt thing that will die in me, will be the heart and affection of

Your Majeſty's moſt humble, and true devoted ſervant,

July 30. 1624. FR. ST. ALBAN.

CCXCII. In Anſwer to the foregoing, by King JAMES.

To our truſty and well-beloved, Thomas Coventry, *our Attorney-General.*

Truſty and Well-beloved, we greet you well:

WHEREAS our right truſty and right well-beloved couſin, the Viſcount of *St. Alban*, upon a ſentence given in the upper houſe of parliament full three years ſince, and more, hath endured loſs of his place, impriſonment, and † confinement alſo for a great time; which may ſuffice for the ſatisfaction of juſtice, and example to others: We being always graciouſly inclined to temper mercy with juſtice, and calling to mind his former good ſervices, and how well and profitably he hath ſpent his time ſince his troubles; are pleaſed to remove from him that blot of ignominy which yet remaineth upon him, of incapacity and diſablement; and to remit to him all penalties whatſoever inflicted by that ſentence. Having therefore formerly pardoned his fine, and releaſed his confinement; theſe are to will and require you to prepare, for our ſignature, a bill containing a pardon in due form of law, of the whole ſentence: for which this ſhall be your ſufficient warrant. *Cabala p.* 270. *Edition of* 1663.

† His ſentence forbid his coming within the verge of the court. [In conſequence of this letter, my Lord *Bacon* was ſummoned to parliament in the firſt year of King *Charles.*]

CCXCIII. The Lord Viſcount ST. ALBAN to ‖ Dr. WILLIAMS, Biſhop of *Lincoln*, concerning his ſpeeches, *&c.*

My very good Lord,

I AM much bound to your lordſhip for your honourable promiſe to Dr. *Rawley:* he chuſeth rather to depend upon the ſame in general, than to pitch upon any particular; which modeſty of choice I commend.

I FIND that the ancients (as *Cicero*, *Demoſthenes*, *Plinius Secundus*, and others) have preſerved both their orations and their epiſtles. In imitation of whom I have done the like to my own; which nevertheleſs I will not publiſh while I live: but I have been bold to bequeath them to your lordſhip, and Mr. Chancellor of the duchy. My ſpeeches (perhaps) you will think fit to publiſh: the letters, many of them, touch too much upon late matters of ſtate, to be publiſhed; yet I was willing they ſhould not be loſt. I have alſo by my will erected two lectures in perpetuity, in either univerſity one, with

‖ This title ſeems to imply that the date of this letter was after the biſhop was remov'd from being lord keeper.

an endowment of 200 *l. per annum* apiece: they to be for natural philoſophy, and the ſciences thereupon depending; which foundations I have required my executors to order, by the advice and direction of your lordſhip, and my Lord Biſhop of *Coventry* and *Lichfield*. Theſe be my thoughts now. I reſt

Your Lordſhip's moſt affectionate to do you ſervice.

CCXCIV. The Biſhop's Anſwer to the preceding Letter.*

Right honourable and my very noble Lord,

MR. Doctor *Rawley*, by his modeſt choice, hath much obliged me to be careful of him, when God ſhall ſend any opportunity. And if his Majeſty ſhall remove me from this ſee, before any ſuch occaſion be offered, not to change my intentions with my biſhoprick.

It is true that thoſe antients *Cicero*, *Demoſthenes*, and *Plinius ſecundus*, have preſerved their orations (the heads and effects of them at the leaſt) and their epiſtles; and I have ever been of opinion, that thoſe two pieces are the principal pieces of our antiquities: Thoſe orations diſcovering the form of adminiſtring juſtice, and the letters the carriage of the affairs in thoſe times. For our hiſtories (or rather lives of men) borrow as much from the affections and phantaſies of the writers, as from the truth itſelf, and are for the moſt of them built altogether upon unwritten relations and traditions. But letters written *è re nata*, and bearing a ſynchroniſm or equality of time *cum rebus geſtis*, have no other fault, than that which was imputed unto *Virgil*, *nihil peccat niſi, quod nihil peccet*; they ſpeak the truth too plainly, and caſt too glaring a light for that age, wherein they were, or are written.

Your lordſhip doth moſt worthily therefore in preſerving thoſe two pieces, amongſt the reſt of thoſe matchleſs monuments you ſhall leave behind you; conſidering that, as one age hath not bred your experience, ſo is it not fit it ſhould be confined to one age, and not imparted to the times to come. For my part therein, I do imbrace the honour with all thankfulneſs, and the truſt impoſed upon me, with all religion and devotion. For thoſe two Lectures in *natural Philoſophy*, and the ſciences woven and involved with the ſame; it is a great and a noble foundation both for the uſe, and the ſalary, and a foot that will teach the age to come, to gueſs in part at the greatneſs of that *Herculean* mind, which gave them their exiſtence. Only your lordſhip may be adviſed for the ſeats of this foundation. The two univerſities are the two eyes of this land, and fitteſt to contemplate the luſtre of this bounty; theſe two lectures, are as the two apples of theſe eyes. An apple when it is ſingle is an ornament, when double a pearl, or a blemiſh in the eye. Your lordſhip may therefore inform yourſelf if one *Sidley* of *Kent* hath not already founded in *Oxford* a lecture of this nature and condition. But if *Oxford* in this kind be an *Argus*, I am ſure poor *Cambridge* is a right *Polyphemus*, it hath but one eye, and that not ſo ſteadily or artificially placed, but, *bonum eſt facile ſui diffuſivum*; your lordſhip being ſo full of goodneſs, will quickly find an object to pour it on. That which made me ſay thus much, I will ſay in verſe, that your lordſhip may remember it the better;

Sola ruinoſis ſtat Cantabrigia pannis
Atque inopi linguâ diſertas invocat Artes,

I will conclude with this vow: *Deus, qui animum iſtum tibi, animo iſti tempus quam longiſſimum tribuat.* It is the moſt affectionate prayer of

Your Lordſhip's moſt humble ſervant,

Buckden the laſt of *December*, 1625.

JO. LINCOLN.

CCXCV. To the † QUEEN of BOHEMIA. 1625.

It may pleaſe your Majeſty,

I HAVE received your Majeſty's gracious letter from Mr. Secretary *Moreton*, who is now a ſaint in heaven. It was at a time when the great deſolation of the plague was in the city, and when my ſelf was ill of a dangerous and tedious ſickneſs. The firſt time that I found any degree of health, nothing came ſooner to my mind, than to acknowledge your Majeſty's great favour, by my moſt humble thanks: and becauſe I ſee your Majeſty taketh delight in my writings, (and to ſay the truth, they are the beſt fruits I now yield,) I preſume to ſend your Majeſty a little diſcourſe of mine, touching ‡ a war with *Spain*, which I writ about two years ſince; which the King your brother liked well. It is written without bitterneſs or invective, as Kings affairs ought to be carried; but if I be not deceived, it hath edge enough. I have yet ſome ſpirits left, and remnant of experience, which I conſecrate to the King's ſervice, and your Majeſty's; for whom I pour out my daily prayers to God, that he would give your Majeſty a fortune worthy your rare virtues; which ſome good ſpirit tells me will be in the end. I do in all reverence kiſs your Majeſty's hands, ever reſting

‡ See Vol. III. p. 513.

Your Majeſty's moſt humble and devoted ſervant,

FR. ST. ALBAN.

† The Princeſs *Elizabeth*, eldeſt daughter of King *James*, was married to *Frederick* V. Elector *Palatine*, who by accepting the crown of *Bohemia*, was ſoon deprived both of that and his ancient principality. Under all her afflictions ſhe had the happineſs of being mother of many fine children, and at length of ſeeing her ſon reſtored to the *Palatinate*, and her nephew to his kingdoms. To her, who had been ſo much injur'd by *Spain*, my Lord *St. Alban* preſents his diſcourſe, touching a war with *Spain*, in acknowledgment of the favour of her Majeſty's letter, ſent by her Secretary Sir *Albertus Moreton*; in which quality he had ſerv'd his uncle Sir *Henry Wotton*, in ſome of his embaſſies: and as he was tenderly beloved by him in his life, and much lamented in his death; ſo Sir *Harry* profeſſed no leſs admiration of this Queen, and the ſplendor of her virtues under the darkneſs of her fortunes. *Stephens.*

CCXCVI. A letter of the Lord BACON's, in *French*, to the Marquis FIAT, relating to his Eſſays.

Monſieur l' Ambaſſadeur mon File,

VOYANT que voſtre Excellence faict & traite mariages, non ſeulement entre les Princes d' *Angleterre* & de *France*, mais auſſi entre les langues (puis que faictes traduire non livre de l' advancement des ſciences en Francois) i' ai bien voulu vous envoyer mon livre dernierement imprimé, que i' avois pourveu pour vous, mais i' eſtois en doubte, de le vous envoyer, pour ce qu' il eſtoit eſcrit en *Anglois*. Mais a' ceſt' heure pour la raiſon ſuſdicte ie le vous envoye. C'eſt *un Recompilement de mes Eſſayes Morales*

Morales & Civiles; mais tellement enlargiés & enrichiés, tant de nombre que de poix, que c' eſt de fait un oeuvre nouveau. Je vous baiſe les mains, & reſte,

Voſtre tres affectionée ami, & tres humble ſerviteur.

CCXCVII. To the Earl of ARUNDEL and SURREY: juſt before his death, being the laſt letter he ever wrote.

My very good Lord,

I WAS likely to have had the fortune of *Caius Plinius* the elder, who loſt his life by trying an experiment about the burning of the mountain *Veſuvius:* for I was alſo deſirous to try an experiment or two, touching the conſervation and induration of bodies. As for the experiment it ſelf, it ſucceeded excellently well; but in the journey (between *London* and *Highgate*) I was taken with ſuch a fit of caſting, as I knew not whether it were the ſtone, or ſome ſurfeit, or cold, or indeed a touch of them all three. But when I came to your lordſhip's houſe, I was not able to go back, and therefore was forced to take up my lodging here, where your houſe-keeper is very careful and diligent about me; which I aſſure my ſelf your lordſhip will not only pardon towards him, but think the better of him for it. For indeed your lordſhip's houſe was happy to me; and I kiſs your noble hands for the welcome which I am ſure you give me to it, *&c.*

I KNOW how unfit it is for me to write to your lordſhip with any other hand than my own; but by my troth my fingers are ſo disjointed with this fit of ſickneſs, that I cannot ſteadily hold a pen.

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